

EXHIBIT B
ROUGH TRANSCRIPT
OCTOBER 24, 2013

1
2 ROUGH DRAFT - DAY 2 - 10/24/13
3

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1 THE COURT: The second housekeeping item
2 is in regard to the Governor's testimony. Is
3 Mr. Schneider here? Mr. Howell is here.

4 MR. HOWELL: Steven Howell, Dickinson
5 Wright, special assistant attorney general,
6 appearing on behalf of the state.

7 THE COURT: Thank you, sir. Is it the
8 parties' agreement and the Governor's intention to
9 appear at 1:00 on Monday?

10 MR. HOWELL: I don't know that -- I
11 believe that's the plan without the limitations
12 suggested. Is that --

13 MR. DeCHIARA: I'm sorry, Your Honor, I
14 was distracted for a moment.

15 MR. HOWELL: If I may, Your Honor, I
16 believe there is ongoing discussions between
17 Matthew, he is meeting today with the Governor to
18 work those details out, but I thought the offer was
19 1:00 o'clock on Monday.

20 MR. DeCHIARA: Yes, the state offered to
21 produce the Governor on 1:00 Monday and there has
22 been no agreement on the limitation of his
23 testimony how.

24 MR. HOWELL: That is correct, Your Honor.
25 THE COURT: Then in that circumstance,

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4 COURT CLERK: Case No. 13-53846, City of
5 Detroit, Michigan.

6 THE COURT: Is anybody not here? All
7 right. Let's assume everyone is here and we don't
8 have to repeat appearances.

9 A couple of housekeeping matters.

10 Mr. Stewart, I received and actually read the
11 memorandum that was filed a few minutes ago on this
12 issue of allowing the witness to testify about
13 projections. Thank you to ever on your staff
14 stayed up all night doing that.

15 MR. STEWART: Fortunately, Mr. DiPompeo
16 did, Your Honor.

17 THE COURT: Thanks to him. As a matter
18 of process, however, before we have any further
19 argument on it, it is appropriate to take some time
20 not only for us, but for the objecting parties to
21 study it and look at the case ish ish ish that have
22 been cited and prepare, so I think we'll proceed
23 with his cross examination and perhaps reconsider
24 the issue after lunch.

25 MR. STEWART: Thank you, Your Honor.

1 the Court will change its plans and we will run
2 Court until 5:00 instead of -- had previously
3 scheduled time of 3:00 because I don't want to have
4 to require the Governor to come back a second day
5 on account of my schedule, so we will plan ongoing
6 until at least five on Monday to try to get all of
7 his testimony in in one day.

8 MR. DeCHIARA: Thank you, Your Honor.

9 MR. HOWELL: Thank you, Your Honor, we
10 appreciate the accommodation. Thank you very much.

11 THE COURT: All right. Let's proceed
12 with the testimony, Your Honor.

13 MR. RUEGGER: Your Honor, excuse me. Art
14 Ruegger for Dentons on behalf of the Retiree
15 Committee. We respectfully request a little more
16 time to read the memo from Jones Day and respond.

17 THE COURT: Do what you can over lunch
18 and then we'll see if you need more time.

19 MR. RUEGGER: Very well, Your Honor.

20 THE COURT: Sir, would you resume the
21 witness stand? And you're still under oath so you
22 may just have a seat and we'll continue with the
23 examination.

1 MR. SHERWOOD: Good morning, Your Honor.
 2 Jack Sherwood, Lowenstein Sandler for AFSCME.
 3 Mr. Malhotra, good morning.
 4 THE WITNESS: Good morning.
 5 EXAMINATION

6 BY MR. SHERWOOD:

7 Q. You were engaged by the City of Detroit in May of
 8 2011, isn't that right?
 9 A. That's correct.
 10 Q. So as of now, you've been on the job for the City
 11 for over two years, is that fair to say?
 12 A. That is correct.
 13 Q. And when you were initially engaged in May of 2011
 14 through the appointment of Mr. Orr as the emergency
 15 manager, you reported to officials, City officials;
 16 is that right?
 17 A. That is correct.
 18 Q. And some of those City officials include Kirk
 19 Lewis, correct?
 20 A. Yes.
 21 Q. And who is Kirk Lewis?
 22 A. Kirk Lewis was the former chief of staff for Mayor
 23 Bing.
 24 Q. And Chris Brown, do you know that name?
 25 A. I do.

1 appointed?
 2 A. No, our general updates are with Mr. Orr.
 3 Q. And since March of this year, you're not reporting
 4 to the City council of the City of Detroit, isn't
 5 that right, since March of this year when Mr. Orr
 6 was appointed?
 7 A. Not specifically, no.
 8 Q. Now Mr. Orr was appointed in March of this year, so
 9 at the time of his appointment, you had been on the
 10 job with Ernst & Young for about a year and ten
 11 months, correct?
 12 A. Sounds about right.
 13 Q. And yesterday you testified on direct about various
 14 conversations, things you told Mr. Orr and the
 15 other professionals for the City, correct? Do you
 16 remember that testimony from yesterday?
 17 A. Yes.
 18 Q. So I assume that when you were updating Mr. Orr and
 19 the rest of the City's professionals, you drew on
 20 your year and ten months worth of experience that
 21 you had working for the City up to that point?
 22 A. For certain aspects of those updates, yes.
 23 Q. Do you recall in the course of your services for
 24 the City, before the appointment of the Emergency
 25 Manager March 2013, providing services in

1 Q. And who was Chris Brown?
 2 A. He was the former chief operating officer for the
 3 City.
 4 Q. And when you say former or Mr. Lewis and/or
 5 Mr. Brown, are they still employed by the City of
 6 Detroit?
 7 A. No, they are not.
 8 Q. And when were they terminated by the City?
 9 A. I don't know if they were terminated and I don't
 10 know the exact date they left.
 11 Q. Okay. But you know that as of now, they're not
 12 working for the City, correct?
 13 A. That's what I said earlier, yes.
 14 Q. And you're not reporting to them -- you're not
 15 report together any City officials at this point in
 16 time, is that fair to say?
 17 A. We report to Kevyn Orr. We had been reporting to
 18 Gary Brown, we had been reporting to Jim Bonshoff
 19 (ph) who was the former chief financial officer,
 20 and those were the folks we were at least reporting
 21 our day-to-day activities on.
 22 Q. I'm just want to get this straight in terms of
 23 time, okay? I'm talking about since March of this
 24 year, are you reporting to the mayor or the mayor's
 25 office since March of this year when Mr. Orr was

1 connection with the response of the City to the
 2 report of the financial review team?
 3 A. Can you shorten the question, sir? Which financial
 4 review team?
 5 Q. Do you recall in late 2012, early 2013, working
 6 with people from the City concerning the financial
 7 review team's report?
 8 A. We were working during that timeframe on the
 9 specific -- improving our mechanisms for improving
 10 the cash flows of the City, yes.
 11 Q. Okay. And as you just testified, one of the topics
 12 you were working on during that period was
 13 improving cash flows, correct?
 14 A. That's right. We were looking at different
 15 alternatives, how the City could improve its cash
 16 flow position.
 17 Q. And you were doing that work for the City and its
 18 officials, correct, before Mr. Orr got involved?
 19 A. That is correct.
 20 Q. Did you attend meetings in December of 2012 where
 21 the issue of the City's cash flows was discussed?
 22 A. Meetings with whom?
 23 Q. Members of the City, members of the City council,
 24 members of the mayor's staff?
 25 A. Yes.

1 Q. All right. I would like to refer you to a
 2 document. It's AFSCME 551, document 551. And Your
 3 Honor, I believe there are -- are you okay with the
 4 screen or -- because I think there might be some
 5 hard copies too?

6 A. I'm okay.

7 Q. Okay.

8 A. Thank you.

9 Q. Now this letter is dated February 22, 2013,
 10 correct?

11 A. That is correct.

12 Q. And I would like you to scroll down to the bottom
 13 of the letter, the paragraph marked cash crisis.

14 Do you see that?

15 A. Yes.

16 Q. And there is a reference to Ernst & Young in that
 17 paragraph and the administration, counsel president
 18 pew, Council President Brown, Council Member
 19 Cockrel fiscal staff, Ernst & Young consultants,
 20 along with Miller Canfield met over the December
 21 holiday break to come up with a cash plan about
 22 counter measures to get the City through June 30th,
 23 2013. Do you recall participating in those
 24 meetings?

25 A. Yes, I do.

1 Honor. I was just asking him using it to refresh
 2 his recollection in terms of things that happened.

3 THE COURT: It's proper to refresh a
 4 witness' recollection when he says he doesn't have
 5 a recollection. I haven't heard that yet.

6 MR. SHERWOOD: Okay.

7 BY MR. SHERWOOD:

8 Q. Did you believe in February of -- February 22nd,
 9 2013, that a satisfactory plan existed to address
 10 the City's cash crisis?

11 A. What a satisfactory plan means is subjective. What
 12 I can say is during the December timeframe, we had
 13 a lot of meetings with the City officials to see
 14 how the City could preserve cash to increase the
 15 cash position over the next few months and that
 16 predominantly resulted in the City coming up with a
 17 plan that said most of these would have to come
 18 through deferrals because what the City could
 19 actually impact in terms of permanent cost
 20 reductions, those options are very limited, so the
 21 majority of any savings that would come or any cash
 22 increase would come would come through the deferral
 23 of either pension related costs or additional
 24 healthcare related costs. That's at least the --
 25 what I view as what the plan was at that point in

1 Q. And you see that in this letter, the authors
 2 conclude on the first sentence that a satisfactory
 3 plan exists to resolve the City's cash crisis. Do
 4 you see that?

5 A. I see it. I didn't write this, but I see it.

6 Q. You do see it. But this was written after your
 7 lengthy meetings over the holiday break, correct?

8 A. This was written on February 22nd. We met during
 9 the December timeframe to come up with different
 10 ideas how the City could preserve cash, which
 11 included a significant amount of deferrals, yes.

12 Q. Okay. But as a result --

13 THE COURT: One second, counsel. Have
 14 you seen this letter before?

15 THE WITNESS: Your Honor, this letter was
 16 handed to me during --

17 THE COURT: That would be a yes or no.

18 THE WITNESS: No.

19 THE COURT: You've never seen this letter
 20 before.

21 THE WITNESS: I have seen it, I have not
 22 read it is my answer. I was given it during my
 23 deposition.

24 THE COURT: Is this letter in evidence?

25 MR. SHERWOOD: I believe it is not, Your

1 time.
 2 Q. Did you ever cite size the City or the council with
 3 respect to their plans to address cash flow issues
 4 during the February 2013 time period?

5 A. Criticize, directly criticize in terms of what the
 6 satisfactory plan was?

7 Q. Did you ever go to the City council or the City
 8 professionals and say I disagree with your cash
 9 management, cash flow plan, do something else?

10 A. During this timeframe, I made very clear that based
 11 on the experience that I had over the past 18
 12 months working with the City that options that the
 13 City was undertaking to preserve cash were
 14 predominantly based on deferrals and not actual
 15 structural cost savings. That's what I clearly
 16 highlighted.

17 Q. Let me ask you about additional revenue collection
 18 during the period of early 2013. Do you recall
 19 whether the City was concerned about revenue
 20 collection from the 36th District Court citations
 21 which the City -- where the City's share would be
 22 \$199 million?

23 A. No, I do not.

24 Q. You don't -- do you recall that that was an issue?

25 A. No, I do not.

1 Q. Do you recall being asked to look into the level of
 2 collections from the 36th District Court in the
 3 amount of \$199 million?

4 A. No, I do not.

5 Q. Do you know what -- do you know whether the 36th
 6 District Court is a source of revenue for the City
 7 of Detroit?

8 A. I think there are some collections, yes, that come
 9 through the 36th District Court. I'm not exactly
 10 sure of the amount off the 36th District Court
 11 collections.

12 Q. You can't even estimate what the amount of the
 13 collections are from the 36th District Court for
 14 2013?

15 A. No, I cannot off the top of my head.

16 Q. So Ernst & Young didn't look into those collections
 17 or whether they were slower than they should be, is
 18 that fair to say?

19 A. That is fair. Ernst & Young did not go into any
 20 specific analysis on 36th District Court on their
 21 collections.

22 Q. Now you discussed a little bit yesterday about the
 23 general fund and the -- is all of the City's debt
 24 attributable to the general fund?

25 A. No.

1 in evidence. The question is what do you remember
 2 after having seen this letter.

3 THE WITNESS: Your Honor, I can at least
 4 frame up what was being asked of me in terms of the
 5 total indebtedness because when I look at debt, I
 6 consider it as pure debt versus other long-term
 7 liabilities. Yes, it does at least give me a frame
 8 of reference to what the question was.

9 THE COURT: Okay.

10 BY MR. SHERWOOD:

11 Q. And does this document, do you agree with the
 12 statement in the document that only 15 percent or
 13 7.36 billion is attributable to the general fund?

14 A. Does that sound right to you?

15 A. That could be an approximation based on the
 16 existing assumptions with respect to unfunded
 17 liabilities from a pension and OPEB standpoint.

18 Q. And the City has other business type activity
 19 funds, department of water and sewage, department
 20 of transportation and municipal parking, and those
 21 funds are not part of the general fund, correct?

22 A. That is correct. They are enterprise funds.

23 Q. And do you know whether the total pension
 24 obligation of the City, is that all attributable to
 25 the general fund or is some of that attributable to

1 Q. Does the total amount of debt that the City has,
 2 does the number 14.9 billion, does that sound in
 3 the ballpark?

4 A. The amount of debt of 14 billion sounds a little
 5 high because in my mind, I remember the \$18 billion
 6 of long-term like its as a total number of which --
 7 so that sounds a little high to me. If you could
 8 break it down for me, it will rerefresh your
 9 recollection my recollection.

10 Q. Let me -- can we put the letter up again and turn
 11 to page three. Under long-term liabilties there --

12 MR. STEWART: Your Honor, I object.

13 We've been over this that he's not testifying to a
 14 lack of recollection. He hasn't seen the letter
 15 unless there is.

16 THE COURT: No, the witness did indicate
 17 some uncertainty about this question, so if this
 18 refreshes his recollection, I'll permit it. Does
 19 this refresh your recollection about the debt of
 20 the City?

21 THE WITNESS: Yes, Your Honor, it's the
 22 long-term liabilities of the City, which as noted
 23 here it's \$14.8 billion, so.

24 THE COURT: But the question for you is
 25 not what the letter says because the letter's not

1 the enterprise funds?

2 A. The pension liability is due to the systems, the
 3 general rear time systems and the police and fire
 4 systems. The general retirement system is
 5 comprised of the general fund employees as well as
 6 water and sewer employees, as well as department of
 7 transportation employees.

8 Q. So is it fair to say that some of the pension
 9 obligation is the responsibility of water and sewer
 10 yes, that would be -- that would be a fair
 11 assumption in terms of what they've been doing.

12 Q. Now in again, early 2013, are you aware that the
 13 City of Detroit was in the process and had been in
 14 the process of trying to achieve certain cost
 15 saving initiatives?

16 A. I don't recall a specific initiatives in early of
 17 2013, but the City has been in a constant effort to
 18 reduce costs and looking for cost savings
 19 initiatives.

20 Q. And would you agree that by March of 2013,
 21 \$150 million of cost saving initiatives had been
 22 achieved by the City of Detroit?

23 A. Compared to about what timeframe?
 24 Q. Simply do you agree that \$150 million of cost
 25 savings had been achieved prior to March 2013?

1 A. It's difficult for me to answer a question on cost
 2 savings achieved by a particular date unless you
 3 can frame for me over what course of time your
 4 question is related to.

5 Q. Can you put up Exhibit 419, please. Your Honor, I
 6 think this is in evidence.

7 THE COURT: Thank you.

8 BY MR. SHERWOOD:

9 Q. Have you seen this report dated March of 2013,
 10 Mr. Malhotra?

11 A. I think so. I would have to see the contents, Your
 12 Honor, to make sure that I understand what's in the
 13 report or what the contents were.

14 THE COURT: Is it on the table over
 15 there? Is it on the table over there?

16 MR. SHERWOOD: Yes, it's 419. May I
 17 approach and help him.

18 THE COURT: He can do it.

19 And while he's doing that, Mr. Stewart, I
 20 have to ask you as I did the objecting attorneys
 21 yesterday to pull the microphone closer to you so
 22 that when you do speak or object, the microphone
 23 will pick it up.

24 MR. STEWART: Thank you, Your Honor.
 25 Will do.

1 THE COURT: Yes.

2 BY MR. SHERWOOD:

3 Q. Have you reviewed it -- you don't have to read the
 4 whole thing, but are generally familiar with this
 5 document?

6 A. Very briefly. I don't think we had any major part
 7 of putting this document together.

8 Q. And this is called the City of Detroit
 9 restructuring plan. It's dated March of 2013. And
 10 by this time, Ernst & Young had, you know, been on
 11 the job for a year and ten months. Are you saying
 12 you had no input into the mayor's restructuring
 13 plan?

14 A. We had a lot of input into the mayor's
 15 restructuring plan. What you are referring to is
 16 this particular report on March 2013. And what I'm
 17 saying is we did not have a significant amount of
 18 input that was put into this particular report.

19 Q. Okay. Can you turn to page five of the report,
 20 getting back to the cost saving initiatives?

21 A. And if you look at the title of that page, and the
 22 first part there, it says many revenue and cost
 23 saving initiatives have been implemented and others
 24 have been identified to address the \$150 million
 25 annual structural deficit. And then if you look at

1 THE WITNESS: Did you say 419?

2 MR. SHERWOOD: 419, yeah.

3 THE WITNESS: I don't see a 419.

4 THE COURT: Which binder is that in?

5 Are they labels?

6 MR. SHERWOOD: I think that would be in
 7 the Retiree Committee's binder.

8 THE COURT: So you couldn't find it, sir.

9 THE WITNESS: Wit Your Honor, I could not
 10 see it in this particular binder or these three
 11 binders.

12 THE COURT: Okay. Can someone produce a
 13 copy for the witness, please.

14 MR. SHERWOOD: I'm sure we have it in our
 15 binder which is up there, I just have to get the
 16 right number.

17 THE COURT: Okay. All right.

18 MR. SHERWOOD: Can you try 522,
 19 Mr. Malhotra? I think it's one of the plaque ones,
 20 probably to your right there.

21 THE COURT: It's not there either?

22 MR. SHERWOOD: Can I hand the witness a
 23 copy, Your Honor.

24 THE COURT: Yes, please.

25 MR. SHERWOOD: May I approach.

1 subparagraph B, below that, it says achieved cost
 2 saving initiatives, approximately \$150 million. Do
 3 you see that.

4 A. That's what's written on this page, yes.

5 Q. And do you have any reason to agree with that
 6 conclusion -- or disagree with that conclusion in
 7 this document?

8 A. Your Honor, it's tough for me to make -- I cannot
 9 make an agreement or disagreement until I
 10 understand the context of the timeframe where a
 11 statement is being referred to. Achieve cost
 12 savings of \$150 million. Whether it's over three
 13 years, two years, one year, I can't put any sort of
 14 reference to it.

15 Q. Okay. Let me try it this way. You started in
 16 May 2011?

17 A. That is correct.

18 Q. And this document was done around March of 2013.
 19 During that period, did you see achieved cost
 20 savings of \$150 million?

21 A. We saw a lot of cost savings. I do not know if
 22 they aggregated to 150 million or not. I would
 23 have to go back and check.

24 Q. Okay. Now what about -- what about reduction in
 25 debt obligations of the general fund. Would you

1 agree that the debt obligations of the general fund
 2 in March of 2013 were \$400 million lower than five
 3 years prior to that?

4 **A.** You're referring to the outstanding debt
 5 obligations, I assume. I do not know what the
 6 outstanding debt balance was five years ago to be
 7 able to draw inference to a five or \$400 million
 8 number.

9 **Q.** And I think we've covered this already, but if you
 10 look at -- would you agree that as of March 201,
 11 approximately \$6 billion of City debt was owed by
 12 the water and sewer department and does not have an
 13 impact on the general fund?

14 **A.** I agree with the first part of that statement that
 15 there's roughly about \$6 billion of revenue bonds
 16 outstanding for the water and sewer department,
 17 yes.

18 **Q.** Now again, March 2013, you had no idea that the
 19 emergency manager was going to be appointed, isn't
 20 that right?

21 **A.** That is correct.

22 **Q.** Okay. And certainly on March 2013, the recovery
 23 plan for the City of Detroit was not finished,
 24 correct?

25 **A.** I'm sorry, what recovery plan are you referring to?

1 not been achieved that were of significance in my
 2 mind that stand out that were of significance as of
 3 March of 2013.

4 MR. SHERWOOD: Okay. Thank you.

5 MR. SHERWOOD:

6 **Q. (By Mr. Sherwood):** As of March 2013 -- and again,
 7 this is before the appointment of Mr. Orr, the City
 8 had not only retained you but it also had retained
 9 the Miller Buckfire firm and it had retained Conway
 10 MacKenzie, isn't that right?

11 **A.** Yes, that's correct.

12 **Q.** So they were on the scene in March 2013 before the
 13 emergency manager was appointed, correct?

14 **A.** Yes.

15 **Q.** And it was yourself and Mr. Moore and Mr. Buckfire,
 16 basically the same team of professionals were
 17 advising the City in their restructuring effort
 18 before Mr. Orr was appointed and those same
 19 restructuring advisors are advising Mr. Orr now,
 20 true?

21 **A.** We were all collectively advising the City from a
 22 restructuring standpoint, yes.

23 **Q.** Okay. So those advisors and yourself had been
 24 retained and if you look at the document, page
 25 five, again, going down to paragraph C, again, we

1 **Q.** Well, were there other cost saving initiatives that
 2 the City and its advisors, including yourself, had
 3 planned?

4 **A.** Going back to December of 2012?

5 **Q.** No --

6 **A.** I'll just finish.

7 **Q.** Go ahead. I'm sorry?

8 **A.** And I'll answer your question.

9 As I testified earlier, in December 2012,
 10 the City, along with us and some of the other
 11 advisors went through a detailed process to figure
 12 out how to improve the city's cash position, as I
 13 testified earlier. The majority of those were
 14 related to predominantly deferrals of bills that
 15 the City had due, not paying them on time.

16 MR. SHERWOOD: Your Honor, I'm sorry to
 17 interrupt. I asked a specific question. The
 18 specific question was in March 2013, were there
 19 future initiatives that the City had planned. And
 20 with due respect, I thought the answer was
 21 non-responsive. I think he was going back to 2012.
 22 So I would ask you just to answer that question.

23 THE WITNESS: I do not recall of specific
 24 initiatives as of March 2013 from a cost saving
 25 standpoint that were either not in progress or had

1 talked about future cost saving initiatives, you
 2 said you didn't recall anything specific, but
 3 scrolling through those items in C, would you agree
 4 that those had been identified by the City and its
 5 professionals as potential future cost saving
 6 initiatives that were in process?

7 **A.** Yes.

8 **Q.** Now the last one there is asset monetization
 9 strategies. Do you see that?

10 **A.** I do.

11 **Q.** Who was the person that was involved from the
 12 professional side in the asset monetization
 13 strategy?

14 **A.** It would have been Miller Buckfire.

15 **Q.** And what is your -- asset monetization strategy,
 16 that means taking City's assets and either
 17 financing them or selling them to raise cash to pay
 18 liabilities, can we agree with that, agree on that?

19 **A.** Or any other -- I would say any other monetization
 20 strategy to create cash for the City. That's the
 21 way I would frame it.

22 **Q.** And to the extent that assets were monetized in
 23 2013, those monetized assets would enhance the cash
 24 profile, the actual cash collections during that
 25 period for the general fund? . Let me just add

1 that.
 2 **A.** If you sell something, you would intuitively have
 3 more cash, however, to answer the second part of
 4 your question, which is to improve the cash
 5 profile, my personal experience is selling assets
 6 to improve cash versus and not addressing the
 7 operational structural in balance that exists. I
 8 don't know if that improves the cash profile as you
 9 put it, but if you sell assets that generate cash,
 10 you will have more cash, yes.

11 **Q.** And you can use that cash to satisfy your
 12 liabilities, correct?

13 **A.** Cash is cash, so if you have more cash, you have
 14 more cash.

15 **Q.** Now let's stay in the period of time before the
 16 appointment of Mr. Orr. Were there discussions
 17 among the professionals and the City concerning
 18 asset monetization strategies?

19 **A.** Not that I was specifically a part of, so I do not
 20 know.

21 **Q.** And do you recall any conversations with Miller
 22 Buckfire concerning asset monetization strategies?

23 **A.** Yes.

24 **Q.** Was Miller Buckfire concerned that asset
 25 monetization in March 2013 or thereabouts would

1 meeting. That's not fair. The counsel interview
 2 meeting on January 29th, 2013, at the airport, yes?
 3 **A.** Yes, I was at that meeting.

4 **Q.** And were you there when Jones Day gave their
 5 presentation?

6 **A.** I was.

7 **Q.** And is it safe to assume when Jones Day or any
 8 other attorneys that were giving their presentation
 9 were presenting, you were particularly interested
 10 in statements that they had to make about liquidity
 11 and cash flow and such, yes?

12 **A.** Yes, absolutely.

13 **Q.** Can you put up 418, please. This is a pretty
 14 lengthy document. If you need a hard copy, we can
 15 get it for you, but let's try it without because
 16 the statements -- I'm not going to go through the
 17 whole thing. Is that okay, Your Honor?

18 **THE COURT:** Sure, try it.

19 **MR. SHERWOOD:** It is in evidence.

20 **BY MR. SHERWOOD:**

21 **Q.** Was this presentation handed out during the meeting
 22 at the airport?

23 **A.** Yes.

24 **Q.** And just to be clear, this presentation was given
 25 not only by Jones Day, but Mr. Orr was also giving

1 have a negative impact on the City of Detroit's
 2 ability to prove that it was eligible for Chapter 9
 3 bankruptcy?

4 **A.** That's a long question. And you asked if Miller
 5 Buckfire was concerned.

6 **Q.** Right?

7 **A.** I can't answer the question if Miller Buckfire was
 8 concerned or not. Would you have to ask Miller
 9 Buckfire.

10 **Q.** Did Miller Buckfire say anything to you -- and
 11 Mr. Buckfire or any of his colleagues -- did he say
 12 anything to you or in your presence where he or
 13 they suggested that they were concerned that if the
 14 City of Detroit monetized assets in 2013, early
 15 2013, March, February, January, that that would
 16 have a negative impact on the City of Detroit's
 17 ability to prove that it was eligible for Chapter 9
 18 bankruptcy?

19 **A.** I do not recall of a conversation like that.

20 **Q.** Did Miller Buckfire express any opposition in your
 21 presence to strategies that would call for short
 22 term monetization of assets in early 2013?

23 **A.** I do not recall.

24 **Q.** You were at the Jones Day meeting at the airport on
 25 January 29th -- I'm sorry, not the Jones Day

1 this presentation to the group?

2 **A.** He was part of the team that presented, yes.

3 **Q.** Okay. Can we turn to -- let's start with page 30
 4 of the presentation.

5 **THE COURT:** Excuse me, sir. Has the
 6 Court been given copies of these exhibits?

7 **MR. SHERWOOD:** Yes, Your Honor. I think
 8 we gave two to the law clerks and.

9 **THE COURT:** Are they up here somewhere?

10 **MR. SHERWOOD:** I believe so. This is
 11 marked in the Retiree Committee's exhibits as
 12 Exhibit 418. It might also be an AFSCME exhibit.
 13 I think everybody offered this one.

14 **THE COURT:** Okay. So the tabs in the
 15 binder don't correspond to the numbers of the
 16 exhibits.

17 **MR. SHERWOOD:** I think, Your Honor,
 18 that's because we didn't decide on the prefix.

19 **THE COURT:** Okay. And we're looking at
 20 what exhibit number now?

21 **MR. SHERWOOD:** It's 418, Your Honor.

22 **THE COURT:** I have it. We're all set.
 23 Thank you.

24 **MR. SHERWOOD:** You're welcome. A lot of
 25 documents.

1 BY MR. SHERWOOD:

2 Q. Turning to page 30, Mr. Malhotra, and if you look
3 at the third line down, it says asset sales pose
4 challenges to generating substantial revenue. Do
5 you see that?

6 A. I see that line, yes.

7 Q. And do you recall whether this slide was presented
8 at the meeting?

9 A. I don't recall.

10 Q. You don't recall?

11 A. No, I do not.

12 Q. Do you recall any discussion about the next line,
13 sale of assets to pay creditors may not promote
14 revitalization. Do you recall that being presented
15 by Mr. Orr or anyone else at Jones Day?

16 A. Not specifically.

17 Q. Okay. Now if you turn to the next page, page 31,
18 and these are the speaker notes for the slide. And
19 if you go right to the middle, there's a thing
20 called -- a line called note. And it says asset
21 monetization outside of bankruptcy may implicate
22 eligibility requirement that the City be insolvent,
23 e.g., measured by short term cash. During the
24 presentation, did anyone from Jones Day suggest to
25 the group that it was not a good idea to engage in

1 A. No, I do not recall.

2 Q. Do you recall any discussions during that or with
3 Mr. Buckfire where the idea was to the extent that
4 we monetize any assets, let's make sure they
5 don't -- that the proceeds don't end up in the
6 general fund? Anything like that?

7 A. I do not remember of any specific conversation of
8 ear marking or highlighting assets like this. I
9 mean, Your Honor, our general discussions were
10 always asset sales were one time sources and but we
11 needed to continue to work to fix the ongoing
12 operating deficit that -- and the cash deficit
13 that's been existing at the City for a long time.

14 Q. Let me ask you one more question about that
15 meeting. Do you recall any suggestions by Mr. Orr
16 or Jones Day during that presentation that the
17 City's policy should be to defend against
18 approaches that focus on monetization of assets to
19 pay creditors?

20 A. No.

21 Q. Can you turn to page 26?

22 Does that refresh your recollection?
23 Fourth bullet point down, "Defend against calls for
24 expense reduction and monetizing assets to pay
25 creditors"?

1 asset monetization outside of bankruptcy because it
2 could hurt the City's case on insolvency?

3 A. I do not recall that. They had five presentations
4 for every presenting group.

5 Q. Let's look at page 62 and 63 of this presentation.

6 I know it's a long presentation, but Mr. Malhotra,
7 did you recall any discussion by Mr. Orr or the
8 rest of the team at Jones Day about evaluating the
9 impact of any asset sale on Chapter 9 eligibility?

10 Do you recall anything about that date? Does this

11 slide refresh your recollection at all?

12 A. It does not. No, I do not recall.

13 Q. And let me just ask one more question about -- on
14 this topic. If you turn to the next page, maybe
15 this will help you. If you look at this speaker
16 notes at the top under asset sales, again, we
17 talk -- it says concerns regarding eligibility for
18 Chapter 9 may be implicated. Any transaction
19 should be reviewed and structured to address any
20 eligibility issues, EG ear marking of funds. Do
21 you recall any discussions by Jones Day during this
22 presentation where they suggested that funds that
23 come from asset monetization be ear marked so that
24 they don't end up in the general fund and thereby
25 jeopardize the Chapter 9 eligibility?

1 A. No, I do not recall a specific conversation like
2 that.

3 Q. Now just to -- just so I understand your testimony
4 from yesterday, when you talked about the revenues
5 that you knew about through May of 2013, to the
6 extent that there was any type of asset
7 monetization before May of 2013, the proceeds of
8 asset monetization would enhance -- could have
9 enhanced the general fund, is that fair to say?

10 A. Yes, if you sell assets that generate cash, you get
11 more cash.

12 Q. All right. I would like -- lets me switch topics
13 real quick. And can we -- 408.

14 Your Honor, 408 and Mr. Malhotra, is the
15 proposal for creditors. I think you talked about
16 this yesterday on direct. And again, we'll give
17 awe copy if you need it, but we'll try to make due
18 with the screen?

19 THE COURT: Okay.

20 MR. SHERWOOD: Okay.

21 BY MR. SHERWOOD:

22 Q. If you look at pages 54 and 55, of 408, I'm looking
23 for 54 and -- well, hold on. Let's try 83 and 84.
24 I'm sorry, Your Honor, there's kind of two sets of
25 numbers on this one. Let's do 83 and 84. There we

1 go. That's 83. Eighty-three or 135, depending on
2 which number you're looking at, or 134.

3 You testified that we talked about
4 realization value of assets and I'm not going to
5 spend a lot of time on this, but some of the --
6 there's a reference to the Detroit Water & Sewer
7 department. And if you scroll down a few -- in the
8 following pages, there's a Coleman Young airport,
9 Detroit Windsor tunnel, Belle Isle Park, Detroit
10 Institute of Arts, City owned land, parking
11 operations, Joe Louis Arena, and I guess the
12 question is, when -- at this presentation, were
13 these assets that are described on these pages
14 assets that could be monetized in order to help the
15 City's cash flow situation?

16 **A.** I think these were generally all the assets that
17 were listed, that this is Miller Buckfire is the
18 investment bank for the City in connection with
19 asset monetization, and so I can't answer questions
20 specifically on asset monetizations because it
21 includes eight or ten different assets, all of
22 which may have different actions to each one.

23 **Q.** Let's talk about taxes for a minute. And if we
24 could stay with the same exhibit, I think there is
25 a discussion about taxes. Do you know what the

1 the issue of outstanding taxes in your two years
2 plus?

3 **A.** That is correct. We were not going out and looking
4 for delinquent taxes, especially of numbers that
5 were highlighted of this magnitude, that's correct.
6 **Q.** Do you know who from the City or on behalf -- let's
7 start with the City. Who from the City was in
8 charge of improving tax collection efforts?

9 **A.** Yeah, it was Cheryl Johnson, who was the City's
10 treasurer, was working, I believe, with Compuware
11 to try and get their arms around what taxes were
12 outstanding, and I believe that project has been
13 going on for a long time. That's what I know about
14 it.

15 **Q.** And you would agree that if the tax collection
16 efforts of the City in late -- in fiscal year 2013,
17 which ends June of 2013, correct? If those tax
18 collection efforts were better, that would have
19 enhanced the general fund, is that fair to say?

20 **A.** The City is already implemented not to at least one
21 amnesty program for sure and I think that probably
22 yielded single digit millions of dollars in the
23 three to \$5 million range in terms of its amnesty
24 program. The City has repeatedly done efforts in
25 order to maximize the collections on taxes that

1 outstanding tax obligations of the City of Detroit
2 were in or about say June of this year?

3 **A.** I do not recall, no.

4 **Q.** Well, I think that the presentation, if you turn to
5 page 87 -- let me make sure I'm using the right
6 numbers here. Page -- page 79, please. Actually,
7 page 80. I'm sorry. Do you recognize this page of
8 the presentation? It talks about taxes.

9 **A.** It does talk about taxes.

10 **Q.** And if you look at about the fourth bullet point
11 down it says, "Compuware has identified historical
12 non-payers with outstanding tax obligations
13 totaling approximately \$250 million," correct?

14 **A.** That's what the sentence says.

15 **Q.** And have you heard numbers substantially in excess
16 of 250 million in terms of the outstanding
17 obligations of taxpayers to the City of Detroit?

18 **A.** I have heard numbers like this and I've been
19 hearing numbers like this for the last two years,
20 the city's property taxes and income taxes.

21 **Q.** But there are a lot of outstanding taxes and
22 they're in the hundreds of millions of dollars,
23 fair?

24 **A.** I cannot say that.

25 **Q.** And you can't say that because you didn't look into

1 they could, at least identified from their records.

2 **Q.** And who from the City is involved in that effort?
3 **A.** Specifically, on the amnesty, it was, I'm sure, the
4 tax department that has been involved, I think,
5 with respect to any past due or these outstanding
6 obligations, I would say that you would have to
7 talk to Cheryl Johnson who is the Treasurer in
8 context of the Compuware discussion.

9 **Q.** But you were not charged at Ernst & Young in doing
10 an analysis of the effectiveness of the City's
11 efforts prior to May, June of 2013, to collect
12 taxes from taxpayers, is that fair to say?

13 **A.** Yes, that is.

14 **Q.** What about abatements, do you know anything about
15 abatements?

16 **A.** No, I do not.

17 **Q.** Do you know that the City has a program for
18 industrial tax abatements?

19 **A.** I do not.

20 **Q.** Do you know anything about Renaissance zone
21 abatements here in the City in terms of property
22 taxes?

23 **A.** Not specifically. I know it is a component of the
24 property tax forecast build up, but not
25 specifically on Renaissance zone and the

1 abatements.

2 Q. Do you know if the City has taken any effort to
3 review the existing tax abatements that are enjoyed
4 by certain of the property owners here in the City
5 of Detroit to make sure that they are fair and up
6 to speed and current?

7 A. I do not know of a specific effort on reviewing the
8 abatements.

9 Q. Do you know who the -- who the tax assessor is for
10 the City of Detroit?

11 A. It used to be Linda Beatty, she has recently
12 retired. I'm blanking out on the name of the new
13 assessor. I think it's Alvin.

14 Q. Do you know, has Ernst & Young been charged with
15 trying to figure out how the assessment -- the tax
16 assessment process works here in the City of
17 Detroit?

18 A. No, Ernst & Young has not been. What I do know is
19 that there are several reviews that are happening
20 to assess ascertain whether the assessed values are
21 too high currently or not in terms of the City's
22 property taxes.

23 Q. What about too low?

24 A. From what I understand, the general view is that
25 the assessments are too high.

1 had during that timeframe with all of the creditors
2 in some fashion or the other.

3 Q. But June 14th was the first. And during that
4 June 14th meeting, this -- the proposal was handed
5 out and presented, right?

6 A. That is correct.

7 Q. During all the meetings from June 14th to
8 July 11th, whatever, after all of those meetings,
9 are you aware of a single change to the June 14th
10 proposal by the City?

11 A. Not specifically that I recall whether we were
12 making changes or not to the June 14th proposal.

13 Q. But you can't cite to a single specific change to
14 the proposal that was made on June 14th, correct?

15 A. Not that I can recall off the top of my head, yes.

16 Q. Now were any of those meetings with union
17 representatives or retiree representatives?

18 A. I think both were present on June 14th.

19 Q. And you were at that meeting?

20 A. I was.

21 Q. And let me ask you this. In terms of dealing with
22 the employee issues, when Mr. Orr was appointed,
23 did you tell him about your personal experience
24 with dealing with the City's unions?

25 A. Yes.

1 Q. But are there -- so there's not a single property
2 in the City of Detroit where the assessment is too
3 low?

4 A. I cannot answer that question. I do not know.

5 Q. Okay. And you haven't been asked to audit that or
6 anything like that?

7 A. That is correct.

8 Q. Let me turn -- I just have one or two more topics,
9 but let me turn to negotiations before the filing.

10 I think you said yesterday that you were
11 at the meeting -- was it June 13th? I'm trying to
12 remember?

13 A. June 14th.

14 Q. June 14th. Thank you. You were at that meeting?

15 A. Yes, I was.

16 Q. That June 14th meeting. And I think you said you
17 were at meetings between June 14th and July 11th as
18 well, correct?

19 A. That is correct.

20 Q. And how many -- there was a June 14th meeting, a
21 June 20th meeting, July 10th, July 11th. Have I
22 got them all?

23 A. I don't know. There was several meetings we had
24 during those weeks and those are the ones I can
remember but there were several meetings that we

1 Q. And you had been involved on behalf of the City
2 before the arrival of Mr. Orr in some pretty
3 substantial negotiations between the City and many
4 many of its unions, true?

5 A. I was -- I was involved in those meetings from the
6 standpoint of helping ascertain the financial
7 implications, yes.

8 Q. Okay. And in February of 2012, and I know we're
9 going way back now, so if you started May 2011,
10 you're only on the job about seven months this
11 time, there were negotiations between the City and
12 a number of unions and those negotiations were
13 successful, correct?

14 A. I don't understand the meaning of successful or
15 not. They were negotiations that were held.

16 Q. But they led to an agreement between the City and
17 the unions, correct?

18 A. They led to tentative agreements.

19 Q. Let's look at Exhibit 505, please.

20 Actually, before I ask any questions about
21 this, you said they -- well, let me ask you about
22 505. Is this a copy of the tentative agreement
23 between the City and the coalition of unions of the
24 City of Detroit?

25 A. Yes.

1 **Q.** And if we turn to the?

2 MR. STEWART: Your Honor, may I interpose
 3 a foundation objection? This has been objected to.
 4 If counsel is laying a foundation for
 5 admissibility, I have no objection. If that's all
 6 you're doing. But if he's going to question the
 7 witness about it, I would have an objection.

8 MR. SHERWOOD: I'm going to try to lay a
 9 foundation, Your Honor, with this.

10 THE COURT: Okay. Go ahead.

11 MR. SHERWOOD: There may be other
 12 witnesses, but I would like to get his
 13 understanding of this document, some testimony,
 14 what he knows about this document on the record so
 15 when we move it into evidence later, you have the
 16 benefit of that.

17 THE COURT: I'll permit that subject to
 18 its ultimate admission.

19 BY MR. SHERWOOD:

20 **Q.** Page 17, please, of the agreement. City of
 21 Detroit. Do you recognize that as Chris Brown's
 22 signature by any chance?

23 **A.** I do think that is Chris Brown's signature.

24 **Q.** And that's dated February 1, 2012. And he was the
 25 chief operating officer for the City of Detroit,

1 **A.** I think there were discussions around wage
 2 concessions, yes.

3 **Q.** And in fact there were wage concessions, do you
 4 recall that?

5 **A.** Are you referring specifically to this tentative
 6 agreement or are you referring --

7 **Q.** Yes?

8 **A.** To broadly?

9 **Q.** This tentative agreement in February of 2012?

10 **A.** I would have to go back and look at because
 11 whether it was new wage concessions or whether it
 12 was a continuance of wage concessions that had
 13 already been provided in the past.

14 **Q.** Was there discussions about giving back some of the
 15 wage concessions to the extent that there was net
 16 surplus for 2012, 2013 and 2014?

17 **A.** Yes, there were discussions around how to give back
 18 wage concessions at the active employees were
 19 giving if the City can get back on its footing from
 20 a financial standpoint, yes.

21 **Q.** And you were involved in that part of the
 22 discussion, correct?

23 **A.** I was involved in at least trying to ascertain how
 24 to ensure either asset sales or refinancings were
 25 not considered as an operational fix or not one

1 correct?

2 **A.** That is correct.

3 **Q.** And just if you can take that down. Let's look at
 4 the signatures on the right. I'm not going to ask
 5 you to identify those signatures, but the parties
 6 to the right, you know, you see IO USA A. Are
 7 these -- do you understand this to be like various
 8 union representatives that signed on to this
 9 agreement?

10 **A.** Yes.

11 **Q.** And it was a union coalition, right?

12 **A.** That is correct.

13 **Q.** Now did you participate with any of the members of
 14 the union during the negotiation of this tentative
 15 agreement?

16 **A.** I was present in those negotiations from -- to
 17 ascertain the financial impact, as I said earlier.

18 **Q.** And you were working for the City at that point,
 19 correct?

20 **A.** That is correct.

21 **Q.** And Chris Brown from the City signed this agreement
 22 and agreed to it, correct?

23 **A.** Yes.

24 **Q.** During those negotiations, did you talk about any
 25 wage concessions by the employees of the City?

1 time --

2 **Q.** I'm just asked if you were involved in that part of
 3 the discussions?

4 **A.** And I was giving you context of how I was involved,
 5 yes.

6 **Q.** But during those discussions, weren't you saying to
 7 the union members that based on the work of you and
 8 other people in the City that the City was going to
 9 get back into the black in 2013 and 2014? Was that
 10 part of your pitch with respect to this?

11 **A.** The discussions that the City was having with its
 12 unions was to try and come up with cash to try and
 13 deal with the cash short fall issues that were
 14 forthcoming, especially after fiscal year 12 where
 15 the City continued to borrow and defer and the City
 16 was in active discussions with its active employees
 17 how to try and address some of the on coming fiscal
 18 year 13 cash issues, yes.

19 **Q.** The question was obviously you've got labor
 20 representatives sitting on the other side of the
 21 table and one of the terms was these give backs,
 22 right? Give backs of wage concessions, right?

23 Certainly the people -- the labor people that were
 24 talking to you wanted to know what's the likelihood
 25 of my people getting these givebacks --

1 MR. STEWART: Objection.
 2 MR. SHERWOOD: Did that happen?
 3 MR. STEWART: Sorry. I object. He's
 4 asking for speculation. Unless the last part of
 5 the sentence was asking what they said to him. I
 6 think his question --

7 THE COURT: I agree. Rephrase the
 8 question, please.

9 BY MR. SHERWOOD:

10 Q. During the negotiations, was it your perception,
 11 based on things said to you by the labor
 12 representatives, that they were concerned about or
 13 they wanted to know what the likelihood was that
 14 they would get their give backs in terms of salary
 15 wage concessions?

16 A. Sorry, can you rephrase that question? It's too
 17 long a question.

18 Q. During the negotiations concerning the tentative
 19 agreement, did anyone on the labor side ask you to
 20 tell them if the wage concessions would happen or
 21 the give backs on the wage concessions would
 22 happen, yes or no?

23 A. I don't recall specifically.

24 Q. Let me ask you this about those discussions. There
 25 were -- there were negotiations that surrounded

1 that talks about cost savings in fiscal year 2012,
 2 and there is a line that talks about --
 3 THE COURT: Well, let's not say what the
 4 document says because it's not in evidence. But
 5 the document can be used to refresh the witness'
 6 recollection if it has that effect.

7 MR. STEWART: May I also ask where it
 8 comes from? I understand for pure purposes of
 9 refreshing recollection what is allowed, on the
 10 other hand, is this part of a larger document?
 11 What is this?

12 MR. SHERWOOD: I believe it was part of a
 13 presentation that was made during the course of the
 14 negotiations in 2012 with respect to the tentative
 15 agreement.

16 MR. STEWART: We have an objection to its
 17 use generally, but.

18 THE COURT: All right. To the extent
 19 there's an objection to the use of the document to
 20 refresh the witness' recollection, it is overruled.
 21 You may present it to the witness.

22 MR. STEWART: Once again, could we frame
 23 again exactly which failure of recollection --

24 THE COURT: I think the record is clear
 25 enough on that point. Let's proceed.

1 healthcare, correct?

2 A. Yes.

3 Q. And one of the objectives in the healthcare part of
 4 the negotiation was to attain \$60 million in
 5 healthcare savings; is that right?

6 A. That sounds right.

7 Q. Okay. And those healthcare savings were going to
 8 come from not only the existing employees of the
 9 City of Detroit, but also the retired employees,
 10 isn't that right?

11 A. I'm not sure about that. I think majority of those
 12 savings were coming from the active employees. I
 13 don't recall if a specific amount from the
 14 retirees.

15 Q. You said the majority. So some of the savings were
 16 coming from the retired employees, isn't that
 17 right?

18 A. I do not recall that.

19 MR. SHERWOOD: Your Honor, I would like
 20 to mark a document that has not been marked before.
 21 It try to refresh the witness's ex recoveries?

22 MR. STEWART: Before he uses it, I would
 23 like to frame very carefully exactly what failure
 24 of recollection this is intended to address.

25 MR. SHERWOOD: Yes, this is a document

1 MR. SHERWOOD: May I approach the witness
 2 and hand him the document, Your Honor.

3 THE COURT: Please.

4 MR. SHERWOOD: And for the record, can
 5 I -- can we mark this as 505A?

6 THE COURT: Sure. Whatever is convenient
 7 for you is fine.

8 MR. SHERWOOD: Your Honor, may I hand a
 9 copy to the Court?

10 THE COURT: Not if its use is for
 11 refreshing recollection.

12 MR. SHERWOOD: Okay.

13 BY MR. SHERWOOD:

14 Q. So Mr. Malhotra, I've showed you what I will mark
 15 as 505A. And if you would look at the box to the
 16 left, relating -- that's called retirees, and then
 17 the data to the right of that, does that -- you
 18 testified that the majority of the savings related
 19 to current employees and you didn't know about
 20 whether any of these savings also impacted
 21 retirees. Do you remember that testimony?

22 A. I testified that the tentative agreements as
 23 reached, if they had any impact on retiree medical
 24 or not, that's what I testified to, yes.

25 Q. Okay. And having reviewed this document, does this

1 refresh your recollection that in fact there were
 2 certain savings projected to be achieved from
 3 retirees for fiscal year 2012 and 2013?

4 THE COURT: All right. Now here I want
 5 to caution you. This does not ask you what that
 6 document says, in fact, turn it over. Do you have
 7 a recollection now, having reviewed that document,
 8 of what the answer to counsel's question is?

9 THE WITNESS: Your Honor, my answer is
 10 the same as it was earlier.

11 BY MR. SHERWOOD:

12 Q. Do you recognize 505A? Have you ever seen it
 13 before? Can he look at it for that purpose?

14 THE COURT: Yes, yes.

15 THE WITNESS: Yes, I recall seeing this
 16 in that 2012 timeframe, yes.

17 BY MR. SHERWOOD:

18 Q. And can you describe what it is?
 19 A. It is trying to describe the projected ask or the
 20 targeted savings the City was looking to get for
 21 fiscal year 13.

22 Q. So this was prepared by the City and these were
 23 part of the request by the City to the labor
 24 representatives in 2012, correct?

25 A. This would have framed some of those discussions,

1 This is the first Chapter 9 bankruptcy
 2 case that you've ever worked on, correct?
 3 A. That is correct.

4 Q. And neither you nor Ernst & Young have ever
 5 prepared a balance sheet for the City of Detroit,
 6 correct?

7 A. That is correct.

8 Q. You began to prepare the schedules for the filing
 9 of this bankruptcy case in may of 2013, isn't that
 10 right?

11 A. It was May June timeframe. I don't remember the
 12 specific date.

13 Q. Could have been May 2013, May, June 2013?

14 A. Like I said, May June timeframe, yes, that sounds
 15 right.

16 Q. Okay. Now in early July, your opinion was not
 17 solicited by anyone before the bankruptcy filing
 18 about the decision to file bankruptcy, isn't that
 19 right?

20 A. That is correct.

21 Q. So you and Ernst & Young, you didn't have any input
 22 whatsoever on whether or not Chapter 9 was the only
 23 alternative for the City of Detroit, isn't that
 24 right?

25 A. That is correct.

1 yes.

2 Q. And were you present when this document was
 3 discussed with representatives of the unions in
 4 2012?

5 A. I do not recall of a specific meeting, but I would
 6 have generally been having some of these
 7 discussions in terms of the quantification of some
 8 of these numbers.

9 Q. Let's go back to 505. Now this agreement, this
 10 tentative agreement, although it was executed by
 11 the City in various union representatives, was it
 12 implemented for the City of Detroit?

13 A. I do not think this exact tentative agreement was
 14 implemented.

15 Q. Do you know why this tentative agreement was not
 16 implemented for the City of Detroit?

17 A. I think the City employment terms were implemented
 18 instead.

19 Q. Isn't it true that the state refused to authorize
 20 the City to implement this agreement?

21 A. I was not a part of those discussions with the
 22 state.

23 Q. And this agreement -- scratch that.

24 Let me just ask a few more random
 25 questions and then I'll be done.

1 MR. SHERWOOD: Your Honor, may I have a
 2 two-minute -- 30 second break just to consult with
 3 a colleague?

4 THE COURT: Yes, we'll sit here while you
 5 do that.

6 MR. SHERWOOD: Your Honor, I would like
 7 to mark another document to -- which addresses the
 8 issue of impact on retiree benefits and just see if
 9 the witness recognizes it, not to refresh his
 10 recollection, just to see if he recognizes it and
 11 can authenticate it.

12 MR. STEWART: This is a new exhibit?

13 MR. SHERWOOD: I believe it is.

14 MR. SHERWOOD: We would object to it,
 15 Your Honor, for any reason other than refreshing
 16 recollection. It was not identified.

17 THE COURT: Well, let's get it marked and
 18 when it's offered into evidence, I'll hear your
 19 objection. What number would you propose?

20 MR. SHERWOOD: 505B.

21 THE COURT: Are we out of numbers?

22 MR. SHERWOOD: I just think we're in the
 23 fives and I don't know what we're up to.

24 THE COURT: Okay. Let me see if I can
 25 help you.

1 MR. SHERWOOD: 505B.
 2 THE COURT: Hold on one second. We have
 3 used every number from 500 to 599. All right.
 4 Fine. 505B it is.
 5 MR. SHERWOOD: May I approach, Your
 6 Honor.
 7 THE COURT: Yes.
 8 Are you asking the witness if he
 9 recognizes this?
 10 MR. SHERWOOD: Yeah.
 11 THE COURT: Do you recognize that
 12 document, sir?
 13 THE WITNESS: Yes, Your Honor, I do.

14 BY MR. SHERWOOD:

15 Q. And can you describe it for us?
 16 A. It's a discussion document dated July 16, 2012.
 17 Q. And did you -- were you involved in the preparation
 18 of this document?
 19 A. Yes, we were.
 20 Q. And was this document presented to -- who was this
 21 document presented to?
 22 A. I don't recall.
 23 Q. For what purpose was this document prepared?
 24 A. It would have been for trying to ascertain the
 25 tentative agreements and the savings that would

1 rights of retirees in the context of those
 2 negotiations.
 3 Our -- I was at the deposition of one of
 4 our clients in Washington where this issue was
 5 raised and probed. We were -- we believed that
 6 this witness, having been involved in those
 7 negotiations, would testify that indeed some of the
 8 give backs in this tentative agreement impacted
 9 retirees and he hasn't clearly done that, so I'm
 10 using this to refresh recollection, Your Honor.
 11 There are a lot of documents in this case. This is
 12 a fast track case with a lot of document review and
 13 production that has been done. This is a City of
 14 Detroit document that certainly this witness and I
 15 assume the other professionals are intimately
 16 familiar with and I do not think that the failure
 17 to put it on our exhibit list in this case and on
 18 this track should prevent the admission into
 19 evidence. It's otherwise relevant for the reasons
 20 that I've set forth and I don't see any prejudice
 21 whatsoever to the City.

22 MR. STEWART: Your Honor, I think it is
 23 prejudicial. We see this for the first time while
 24 the witness is on the stand. In fact, so fresh is
 25 it we don't even know how to number it as an

1 have come from some of the tentative agreements.
 2 Q. And does this document refresh your recollection as
 3 to the savings that could be achieved from retiree
 4 healthcare?
 5 A. I would have to go to that specific section.
 6 Q. Yes, please do.
 7 THE COURT: Well, hold on. It's not
 8 proper to ask the witness a question about the
 9 contents of the document until it's admitted into
 10 evidence.

11 MR. SHERWOOD: I move it into evidence,
 12 Your Honor.

13 MR. STEWART: We object, Your Honor.
 14 Well, first of all, I'm not sure what its relevance
 15 is, but more to the point, it wasn't identified as
 16 part of the pre-trial process we engaged in to
 17 identify, have timely objections and have an
 18 opportunity to review documents.

19 MR. SHERWOOD: I agree that it wasn't
 20 identified pre-trial, Your Honor. We did identify
 21 the tentative agreement, however. We have
 22 maintained in this case that on the
 23 impracticability issue, that indeed it was and is
 24 possible to negotiate with a large number of unions
 25 for this City and to negotiate with respect to the

1 exhibit.
 2 And to the point that he didn't get the
 3 answer from the witness he wanted. If he fails in
 4 trying to refresh recollection, the answer is for
 5 him to call his own witness, not to bring in
 6 documents outside of the normal structure that we
 7 had all agreed upon.

8 THE COURT: I agree that this record does
 9 not establish cause to add an exhibit to the
 10 established witness list. Accordingly, the
 11 objection is sustained. The document may be used
 12 to refresh recollection.

13 MR. SHERWOOD: Excuse me one second, Your
 14 Honor.

15 BY MR. SHERWOOD:

16 Q. I'm going to try to use this to refresh your
 17 recollection. Can you turn to page seven, please?
 18 Now again, we're on the topic of whether this
 19 negotiation involved savings on benefits that
 20 impacted retirees. If you look at the second block
 21 down on the left, have you read that block?
 22 A. Yes.

23 Q. And have you -- and does that block and the numbers
 24 to the right of it refresh your recollection as to
 25 whether or not in the context of these negotiations

1 the City was -- or the union reps were negotiating
2 with respect to rights of retirees?

3 **A.** No. In fact, my recollection --

4 THE COURT: The only question is does
5 that document refresh your recollection on that
6 question.

7 THE WITNESS: Sorry, Your Honor. No.

8 BY MR. SHERWOOD:

9 **Q.** And just to be clear on this point, it's your --
10 you don't recall during these negotiations whether
11 the City and the representatives of the unions
12 negotiated and reached an agreement that impacted
13 the rights of the City's retirees, is that your
14 testimony?

15 **A.** That is my testimony, yes.

16 **Q.** That you don't recall?

17 **A.** That's what I just said.

18 MR. SHERWOOD: Okay. Thank you, Your
19 Honor.

20 Thank you, Mr. Malhotra. I have nothing
21 further.

22 THE COURT: All right. At this time
23 we'll take our morning 15-minute recess.

24 COURT CLERK: All rise. Court is in
25 recess.

1 running of the City, the direct operation of the
2 City, correct?

3 **A.** Yes.

4 **Q.** Yes, I'm correct?

5 **A.** Yes, you're correct.

6 Let me ask you about the June 14th, 2013 meeting at
7 which the Emergency Manager made his presentation
8 of the creditor proposal. Do you remember your
9 testimony about that meeting yesterday?

10 **A.** Yes.

11 **Q.** And I believe you testified on direct that there
12 were questions that were asked by the people who
13 were in attendance at that meeting, correct?

14 **A.** Yes.

15 **Q.** Okay. Am I correct that the procedure at that
16 meeting was that if an attendee wanted to ask a
17 question or make a comment, they had to write it
18 down on a card which would then be passed up to the
19 front and then would be read out by someone in the
20 front of the room? Wasn't that the procedure?

21 **A.** As I recall, I think, yes.

22 **Q.** And let me now draw your attention to the June 20th
23 meeting. Do you recall your testimony about the
24 June 20th meeting?

25 **A.** Yes.

1 (Whereupon a break was taken
2 from 10:37 a.m. to 10:59 a.m.)

3 COURT CLERK: Court is in session.

4 Please be seated.

5 MR. DeCHIARA: Good morning, Your Honor.
6 Peter DeChiara from the law firm of Cohen, Weiss &
7 Simon, LLP for the UAW International Union.

8 Good morning, Mr. Malhotra.

9 THE WITNESS: Good morning.

10 EXAMINATION

11 BY MR. DeCHIARA:

12 **Q.** One preliminary question, Mr. Malhotra. Between
13 the time that you completed your direct testimony
14 at the end of the day yesterday and when you began
15 your cross examination today, did you consult with
16 counsel about the subject of your testimony?

17 **A.** No, I did not.

18 **Q.** You're not and never have been an officer of the
19 City of Detroit, correct?

20 **A.** That is correct.

21 **Q.** And you've never -- and you don't currently and you
22 never have held any elected or appointed position
23 with the City; is that correct?

24 **A.** That is right.

25 **Q.** And you don't -- you're not involved in the direct

1 **Q.** And the Emergency Manager was not present, correct?
2 **A.** That is correct.

3 **Q.** And the people who were presenting at the meeting
4 were City advisors, including yourself, correct?

5 **A.** Yes.

6 **Q.** Did anyone from the City tell you that you had
7 authority to negotiate for the City at that
8 meeting?

9 **A.** I was presenting at that meeting.

10 **Q.** Is the answer to my question no?

11 **A.** That is correct.

12 **Q.** And it was not your understanding, was it, that you
13 had authority to negotiate for the City at that
14 meeting, am I correct?

15 **A.** I was not negotiating for the City at that meeting,
16 that is correct.

17 **Q.** And is it -- do you have any knowledge that any of
18 the other advisors who were attending that meeting
19 on behalf of the City had authority to negotiate
20 for the City?

21 **A.** I can't say what the authority was of the other
22 advisors. Would you have to ask them.

23 **Q.** So you have no knowledge -- you have no affirmative
24 knowledge that any of the other advisors were
25 authorized to negotiate on behalf of the City; is

1 that correct?
 2 **A.** I have no knowledge one way or the other, that is
 3 correct.
 4 **Q.** Were there any other meetings besides the June 14th
 5 and June 20th meeting that you attended where there
 6 were presentations made to labor retiree groups?
 7 **A.** I don't recall specifically.
 8 **Q.** As you sit here today, you don't recall any others?
 9 **A.** I do not recall any others as of now.
 10 **Q.** You testified, I believe, on direct about a July
 11 ninth meeting. Do you recall that testimony?
 12 **A.** Yes.
 13 **Q.** And who were the attendees -- what category of
 14 attendees attended the July 9th meeting?
 15 **A.** My recollection is that it was the City's advisors
 16 and members of the retirement systems or advisors
 17 for the retirement systems and other retirees.
 18 **Q.** So the -- so I'm going to distinguish between the
 19 presenters and the attendees. The attendees were
 20 advisors to the retirees and the retirees?
 21 **A.** That's my recollection, yes.
 22 **Q.** Okay. And were there negotiations -- did you
 23 engage in negotiations on behalf of the City at
 24 that meeting?
 25 **A.** We had discussions about the City's financial

1 meaningful negotiations, it's often helpful to have
 2 shared assumptions between the parties?
 3 **A.** Yes.
 4 **Q.** Did anyone tell you that from the City -- did
 5 anyone from the City tell you that you were
 6 authorized at the July 19th -- I'm sorry, the
 7 July 9th meeting to negotiation on behalf of the
 8 City?
 9 **A.** No.
 10 **Q.** You testified about certain meetings you had with
 11 the Emergency Manager, Mr. Orr, at which you orally
 12 presented to him certain findings or analysis that
 13 you had prepared. Do you recall that testimony on
 14 direct?
 15 **A.** Yes.
 16 **Q.** Okay. And how many of those meetings were there?
 17 **A.** I cannot count the number of meetings or conference
 18 calls that we had. There were numerous.
 19 **Q.** Okay. So there were numerous face to face meetings
 20 and also numerous conference calls?
 21 **A.** Can you clarify what timeframe is your question
 22 related to?
 23 **Q.** Well, you tell me. I'm just asking about the
 24 meetings that you had -- well, okay. I can do
 25 this.

1 profile as well as discussions around pensions, as
 2 I recall in that meeting.
 3 **Q.** And I believe your direct testimony was that the
 4 purpose of that meeting was to discuss actuarial
 5 assumptions; is that correct?
 6 **A.** No, what I said on my testimony is that at the end
 7 of the meeting, there was discussion or dialogue
 8 about trying to get the retirement system and the
 9 City's advisors on the same page with respect to
 10 the actuarial assumptions.
 11 **Q.** And the reason -- and you were involved in that
 12 effort; is that correct?
 13 **A.** Not really. I was not intimately involved with the
 14 actuarial assumptions at all.
 15 **Q.** Okay. Did you have an understanding -- did the
 16 City advisors want to achieve an understanding with
 17 the retiree system advisors as to actuarial
 18 assumptions?
 19 **A.** Yes.
 20 **Q.** And did you have an understanding about why the
 21 City advisors wanted to obtain that understanding?
 22 **A.** I do. It was generally to try and ascertain the
 23 amount of the underfunding in the two pension
 24 systems, yes.
 25 **Q.** Would it be fair to say that as a predicate for

1 From the time the Emergency Manager became
 2 the Emergency Manager until the bankruptcy filing.
 3 Let's say that's the timeframe. How many face to
 4 face meetings did you have with the Emergency
 5 Manager at which you presented conclusions or
 6 findings or analysis?
 7 **A.** I can't recall the specific number, but there were
 8 several.
 9 **Q.** Okay. And were these one on one meetings that you
 10 had with the Emergency Manager?
 11 **A.** We may have had -- yes, there were a couple one on
 12 one meetings as I thought, as I recall, and there
 13 were meetings in a broader group setting with the
 14 City's other advisors.
 15 **Q.** And the ones that took place in a broader group
 16 setting with the City's other advisors, those were
 17 prescheduled meetings?
 18 **A.** Generally, yes.
 19 **Q.** Okay. And who were the other City advisors who
 20 attended those meetings?
 21 **A.** It would have been representatives from Jones Day,
 22 from Miller Buckfire, Conway MacKenzie, our team,
 23 and -- but there were several meetings and there
 24 wasn't a set schedule that everybody was at a
 25 particular meeting is my recollection.

1 **Q.** Okay. But some of the meetings where there were
2 other advisors were present where you presented
3 conclusions or findings or analysis to the
4 Emergency Manager were meetings where Jones Day
5 attorneys were present, correct?

6 **A.** Yes.

7 MR. DeCHIARA: Your Honor, I don't have
8 anything further on that line of questioning. I
9 would note for the record that the City has on the
10 direct of Mr. Malhotra had Mr. Malhotra testify on
11 direct about meetings he had with Mr. Orr in the
12 presence of counsel.

13 BY MR. DeCHIARA:

14 **Q.** You testified about a meeting that you attended in
15 New York, I believe with the bondholders and the
16 insurers of the bondholders; is that correct?

17 **A.** Yes.

18 **Q.** And when was that meeting?

19 **A.** I think it was June 25th, maybe, is my
20 recollection.

21 **Q.** I would like now to direct your attention to the
22 proposal to creditors, which is Exhibit 43. Do you
23 have the exhibit book or could somebody call up
24 Exhibit 43, please?

25 **A.** I'm happy to get it if you just let me know what

1 **A.** I can't recall if all of them were there, but they
2 were representatives from the bond insurers at that
3 meeting, yes.

4 **Q.** Do you remember specifically which ones were there
5 and which ones were not?

6 **A.** No, I do not.

7 **Q.** Can you testify whether they were all there or they
8 were not all there?

9 **A.** No, I cannot.

10 **Q.** Okay. So they may all have been there; is that
11 correct?

12 **A.** It could be, yes.

13 **Q.** Okay. Let me turn your attention to page 120.

14 It's Appendix E. There's a similar column, the
15 right column, says insurer -- and let me just ask
16 the same question. Were representatives of those
17 insurers at that -- at the June 25th meeting?

18 **A.** I cannot recall specifically if all of them were
19 there. My assumption -- I think most of them were
20 there, all the advisors, but I do not recall
21 specifically if each and every one of these were
22 there or not.

23 **Q.** Okay. Do you have an understanding of what
24 percentage of the bondholders of the unsecured
25 bondholders of the City of Detroit were insured by

1 **Q.** folder it is. What folder, 43?

2 I don't know what folder it is, but?

3 MR. STEWART: It was your 408.

4 MR. DeCHIARA: No, I'm correct. It's
5 City Exhibit 43.

6 THE COURT: Can you help the witness find
7 it, please.

8 MR. DeCHIARA: Absolutely. Do you have
9 it?

10 THE WITNESS: I got it. Thank you.

11 MR. DeCHIARA: Okay.

12 BY MR. DeCHIARA:

13 **Q.** Mr. Malhotra, if I could ask you to turn to page
14 114 of Exhibit 43. Are you on page 114?

15 **A.** Yes.

16 **Q.** Okay. Let me direct your attention to the last
17 column on the right. It says insurer. Do you see
18 that?

19 **A.** I do.

20 **Q.** And do you see there's a list of insurers there?

21 **A.** Yes.

22 **Q.** And those are the insurers for the bondholders?

23 **A.** Yes.

24 **Q.** And were representatives of those insurers present
25 at the June 25th meeting?

1 the insurers that are listed in appendix A through
2 E of Exhibit 43?

3 **A.** No, I do not.

4 **Q.** It's the majority, isn't it?

5 **A.** I would assume, but I'm not sure. I haven't done
6 the percentage of all of the unsecured notes, what
7 percentage are insured versus not. I haven't done
8 that calculation.

9 **Q.** Am I correct if we wanted to -- if someone wanted
10 to determine that, one could add up the numbers on
11 the appendices under the balance column and
12 determine the percentage that are insured?

13 **A.** Presumably, if if they're still insured at that
14 particular timeframe or not, presumably yes.

15 **Q.** Okay. Thank you. And just so I understand
16 correctly, when a bondholder is insured, that means
17 that if the municipality defaults on the bond, the
18 bondholder has recourse against the insurer?

19 **A.** That is my understanding, yes.

20 MR. DeCHIARA: No further questions.

21 THE COURT: Anyone else have any cross
22 examination questions for the witness?

23 MR. RUEGGER: Yes, Your Honor.

24 MR. DeCHIARA: Your Honor, I would just
25 ask to reserve the right to ask additional cross

1 examination questions if the Court decides to
2 reverse its prior ruling.

3 THE COURT: Yes. That right is reserved
4 for everyone.

5 On that point, just so I don't forget
6 later, I have reconsidered my suggestion that we
7 revisit this after lunch and to give both you all
8 and us time to review the memorandum and the issue,
9 we'll take it up again tomorrow morning.

10 MR. RUEGGER: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MR. RUEGGER: May I proceed.

13 THE COURT: Yes.

14 MR. RUEGGER: Thank you. Good morning,
15 Mr. Malhotra. My name is Arthur Ruegger from the
16 Dentons firm. We haven't met before. I represent
17 the Retirees Committee here.

18 EXAMINATION

19 BY MR. RUEGGER:

20 Q. And I don't have a lot to ask you but, I do want to
21 talk a little bit about a document that Mr. Stewart
22 raised yesterday. It was City Exhibit 44. It's I
23 believe the executive version of the June 14th
24 proposal. Is it on your screen?

25 A. It is, yes.

1 and ascertain what part of those collections were
2 related to property taxes versus not. It was to
3 track the monthly gaming taxes, it was to look at
4 the activity in the other receipts, it was to
5 highlight any sort of one time bond related or
6 escrow related proceeds that were coming in that
7 were further augmenting the general funds cash
8 balance.

9 Q. And did you assign any of your team members any of
10 those particular matters to be their
11 responsibility?

12 A. No, they were generally a team effort.

13 Q. Can you tell us beyond what you've just answered,
14 in general, what was the process of compiling those
15 figures?

16 A. Our team tracks the pretty much daily cash activity
17 of the City to ascertain what receipts are coming
18 in, what disbursements are going out, to at least
19 help able to quantify where that activity is going
20 on a day in, day out basis, and because we have to
21 try our best to assure the City did not run out of
22 cash, and that's the reason we had our team working
23 specifically on the receipts and disbursements
24 activity, looking at the bank accounts, looking at
25 the bank statements, to ensure that we could

1 Q. And specifically, if we could look at page eight.
2 And I'm going to ask you some questions about the
3 fiscal year 2012 figures that are on that page. So
4 if you could expand that, that would probably
5 make it easier for us to see. Great.

6 First, Mr. Malhotra, when were these
7 figures -- and specifically the fiscal year 2012
8 figure -- when were they finalized?

9 A. This is cash activity, so it's -- it would have
10 been right around that end of fiscal year 2012, so
11 July 2012. This is cash activity.

12 Q. Okay. And how large was the E&Y team at that time?

13 A. At what time?

14 Q. When these figures were finalized?

15 A. Probably four or five.

16 Q. And did they have specialized roles?

17 A. Yes, our team was focused very focused on looking
18 at all of the cash activity, yes.

19 Q. So can you tell us what the individual roles were
20 on your team?

21 A. They were to ascertain what receipts were timing
22 versus permanent, any variances, looking at all of
23 the property taxes, looking at the income taxes.
24 The City generally receives a lot of its
25 collections in certain lockboxes. We had to try

1 forecast where the movement was so that the City
2 would not run out of cash as it had to rely on
3 refinancing proceeds to keep going.

4 Q. Did you do any of that tracking personally or was
5 that your team's responsibility?

6 A. It was a combination. I was intimately involved.
7 Q. Tell me what part you were intimately involved and
8 what part your team did?

9 A. I don't think there's a specific delineation of
10 what part I did versus what my team did. It was a
11 team effort and I was intimately involved with the
12 team.

13 Q. All right. If you could look at that part of
14 Exhibit 44, I think you testified yesterday that
15 your team or someone from your team contacted the
16 City individual responsible for property taxes, is
17 that correct?

18 A. I don't recall that specific part of my testimony.
19 Q. Forgive me, I don't mean to misstate your
20 testimony.

21 Did your team attempt to verify, for
22 example, the property tax figure that's on that
23 document for fiscal year 2012?

24 A. This would have represented -- to verify, I don't
25 know if you mean audit.

1 **Q.** Don't mean audit.
 2 **A.** In terms of all the cash that comes in gross tax
 3 collections, our team is to try our best ability
 4 what collections were for property taxes and what
 5 taxes were due to the City and versus what property
 6 taxes were related to distributions that the City
 7 had to make to other taxing authorities.
 8 **Q.** With all respect, sir, I'm not sure that was
 9 responsive. I'm trying to determine to what extent
 10 anyone on your team verified the figures and
 11 specifically the property tax figure there.
 12 **A.** This would have been the number that we had to the
 13 best of our ability.
 14 **Q.** And you had it from what source, sir?
 15 **A.** It would have been from a -- for fiscal year 2012,
 16 from a combination of the bank accounts or the
 17 City's internal reports.
 18 **Q.** I'm sorry, I didn't hear you, the City's what
 19 reports?
 20 **A.** Internal reports.
 21 **Q.** Internal reports?
 22 **A.** Yes.
 23 **Q.** Did you consider the CAFR for this analysis at all?
 24 **A.** This is fiscal year 2012 cash activity. The CAFR,
 25 the CAFR doesn't come out for months after that.

1 do of cash. This is not audited statements.
 2 **Q.** Your team didn't have the cash, right?
 3 **A.** We tracked cash.
 4 **Q.** Your team was not counting the cash, it was looking
 5 at reports from the City?
 6 **A.** That is accurate. We were not counting dollar
 7 bills if that's your question.
 8 **Q.** That was true for both the bank reports and the
 9 internal City reports?
 10 **A.** We were tracking cash to the best of our ability.
 11 **Q.** Based on the City's reports?
 12 **A.** Based on our review of the City's reports and our
 13 review of the bank statements.
 14 **Q.** And I don't mean to belabor the issue, but you
 15 didn't check the City's reports, did you, you
 16 reviewed them and accepted them?
 17 **A.** We used to track cash compared to bank activity, so
 18 we used to check them, we used to review them, ask
 19 questions, but generally tracking cash was not
 20 going to accruals or anything like that, it was
 21 tracking cash.
 22 **Q.** All right. Back to my question about the income
 23 and utility taxes. How did you derive that figure?
 24 **A.** This would be a combination as I already testified
 25 based on the City's internal reports and the bank

1 **Q.** So I thought he yesterday you testified and correct
 2 me if I'm wrong that someone from your team
 3 contacted the City to check the property tax
 4 figures, is that not correct?
 5 **A.** You can go back to my testimony. I don't remember
 6 that specific piece. We looked at the cash
 7 activity of the City in a considerable amount of
 8 detail.
 9 **Q.** Dropping down to the next item, income and utility
 10 taxes. How were -- how was that figure derived?
 11 **A.** That figure was derived from the information we had
 12 from the bank accounts as well as the City's
 13 internal reports.
 14 **Q.** And when you say City's internal reports, what kind
 15 of reports were those?
 16 **A.** They're various internal reports that the City
 17 tries its best ability to track this cash activity.
 18 **Q.** Did anyone on your team ever try to get behind any
 19 of those figures?
 20 **A.** In order to --
 21 **Q.** Check their accuracy.
 22 **A.** Cash is generally cash. If you're trying to ask
 23 the classification of those receipts? You know
 24 there's always classification issues, but cash is
 25 generally cash. I don't know what verification you

1 accounts and even other discussions we may have had
 2 with the City personnel.
 3 **Q.** Did you have any personal conversations with City
 4 personnel related to that item?
 5 **A.** I may have. I don't recall specifically. This is
 6 going back to fiscal year 2012.
 7 **Q.** Do you recall having any personal conversations
 8 with anyone at the City related to the property tax
 9 item?
 10 **A.** I don't remember a specific conversation. We used
 11 to track these daily or actually in fiscal year
 12 2012, at least weekly to get our arms around the
 13 cash activity.
 14 **Q.** So you and your team?
 15 **A.** That is correct.
 16 **Q.** What about the gaming taxes, do you recall where
 17 that figure came from?
 18 **A.** I think it comes from the City's bank activity.
 19 **Q.** The City's bank activity?
 20 **A.** Its bank statements.
 21 **Q.** Bank statements. And how often did you receive the
 22 City's bank statements?
 23 **A.** It has varied from time to time, but we are
 24 receiving statements right now on a weekly basis if
 25 not on a daily basis that checks --

1 Q. I'm sorry, I didn't mean to speak over you. And
 2 back in 2012, do you recall how often you were
 3 receiving those statements.

4 A. I do not recall, but we started getting the bank
 5 statements on a regular basis as soon as we gotten
 6 gauged because that was the best proxy to track
 7 cash.

8 Q. And that would have been 2011, correct?

9 A. Calendar year 2011, that's right.

10 Q. But I'm asking now about 2012. Do you recall how

11 often you got statements relating to gaming taxes?

12 A. Talking about fiscal year 2012? I just want to
 13 make clear, that includes a part of 2011. We would
 14 have received activity on a regular basis, that's
 15 what I would say.

16 Q. And you can't recall now whether that was weekly or
 17 twice a month or monthly?

18 A. That is correct, I can't recall.

19 Q. How about the municipal service fee to casinos?

20 A. Consistent with how we received the gaming taxes
 21 information.

22 Q. Reports from the City?

23 A. Reports, bank activity, discussions with from the
 24 City's management team.

25 Q. I'm sorry, discussions with who at the City?

1 service fees to casinos; is that correct?

2 A. I do not recall the a specific conversation, you
 3 are correct.

4 Q. How about the state revenue sharing? I think you
 5 talked about that yesterday. Did you have any
 6 personal involvement in any conversations with the
 7 state relating to the revenue sharing figure that's
 8 reflected in this exhibit?

9 A. It's -- no, cash that's received every second month
 10 pretty regularly.

11 Q. I thought you testified yesterday, and I don't want
 12 to put words in your mouth, that there was a
 13 conversation with the state related to what the
 14 revenues that came from the state to the City, is
 15 that wrong?

16 A. No, you're correct, but my testimony was related to
 17 the forecast specifically and I'm happy too talk
 18 about it and also the ten-year forecast in terms of
 19 the assumptions behind it.

20 Q. I understand you might be happy about that, but
 21 let's talk to these figures now?

22 A. I was just clarifying your question and my
 23 testimony. This is for fiscal year 2012.

24 Q. Correct.

25 A. I did not have specific discussions with the state.

1 A. The City's management team.

2 Q. Okay. Do you recall having any personal
 3 conversations with the City's management team
 4 relating to that line item?

5 A. No, I do not.

6 Q. So any conversations would have been between your
 7 team and the people at the City?

8 A. No, that's not right.

9 Q. Okay. What would -- who was part of those
 10 conversations to your knowledge?

11 A. Like I said earlier, I was intimately involved with
 12 the tracking the cash activity of the City given
 13 how precarious the cash position was. I had
 14 several discussions with members of the City's
 15 management team with respect to cash. Your
 16 question was if I had a specific conversation on
 17 this particular line item. I do not recall. I had
 18 specific conversations on the cash activity with
 19 various members of the City's management team.

20 Q. Over what period of time?

21 A. Since the time we gotten gauged.

22 Q. How frequently?

23 A. I cannot recall. It was frequent.

24 Q. Just so we're clear, you don't recall having any
 25 conversations specifically related to the municipal

1 We used to track this cash activity through a
 2 combination of the City's reports, the bank
 3 activity and discussions with the management team
 4 on a regular basis.

5 Q. How about the last item there, fairly large one,
 6 other receipts. What goes into that?

7 A. That includes grant receipts, it includes any sort
 8 of fines that are collected, includes any sort of
 9 fees that are charged by the different departments,
 10 it also includes some of the utility charges that
 11 come through, so it's a variety of items that makes
 12 up that line item.

13 Q. And did your -- what was the source for your team's
 14 collection of that data?

15 A. It was the same as I highlighted before.

16 Q. Reports from the City?

17 A. Bank statements, reports from the City, and
 18 discussions with the management team.

19 Q. Did the bank statements that come in, do they break
 20 out these line items as set forth in Exhibit 44 on
 21 this page?

22 A. Some of those items are broken out, I believe, but
 23 that was a part of the process in which we used to
 24 look at that activity and try and ascertain where
 25 those dollars belonged so that we could be updating

1 our forecast ing based on the run rates more
 2 accurately, based on the information we received.
 3 **Q.** For 2012, the figure on this exhibit is -- is that
 4 a billion 765 million; is that correct?
 5 **A.** That is correct, including 50 million of
 6 refinancing.
 7 **Q.** And is it correct that that's simply cash, that's
 8 not something that could be the subject of
 9 discussion or adjustment?
 10 **A.** That's right. It's cash.
 11 **Q.** Okay. Did you have any conversations or did your
 12 team, to your knowledge, have any conversations
 13 with anybody from Conway MacKenzie relating to the
 14 fiscal year 2012 figures?
 15 **A.** We had discussions around the fiscal year 2012
 16 figures with all of the advisors in terms of what
 17 the cash activity for fiscal year 2012 was.
 18 **Q.** So in essence, your team or you just relate to
 19 Conway MacKenzie what the cash figures were?
 20 **A.** We related to their cash activity of fiscal year
 21 2012 as shown on this page was discussed with
 22 Conway MacKenzie and all of the other advisors.
 23 **Q.** Now these -- this is the general fund figure; is
 24 that correct?
 25 **A.** Predominantly, yes. It does not include the

1 **A.** That's generally correct.
 2 **Q.** So they can generally handle their own debts and
 3 take care of their own business?
 4 **A.** Yes.
 5 **Q.** I would like to ask the help to put up Exhibit 6,
 6 which is also in evidence, and in this instance, I
 7 believe it's the CAFR for 2012. And if you could
 8 turn to page 20 of that exhibit. If you could
 9 highlight please just the 2012 total receipts and
 10 compare it with, if you could, Exhibit 44, which we
 11 were just looking at.
 12 I believe on the top, we have an excerpt
 13 from Exhibit 6, which is the 2012 CAFR. You're
 14 familiar with that document, Mr. Malhotra?
 15 **A.** Yes, I am.
 16 **Q.** And at the bottom is figure -- we were actually
 17 looking at the left hand column, but that's the
 18 figure from Exhibit 44. Am I correct?
 19 **A.** That is correct.
 20 **Q.** You'll note there is a discrepancy between the
 21 total operating receipts figure, which we were
 22 talking about in the bottom and the total revenues
 23 figure that's recorded in the top. Can you explain
 24 for us please what the differences are between
 25 those two figures?

1 activity for water and sewer department or the
 2 receipts for DDOT.
 3 **Q.** Or receipts for?
 4 **A.** I'm sorry, the department of transportation.
 5 **Q.** It does not or it does include department of
 6 transportation?
 7 **A.** It does not include the receipts of the department
 8 of transportation. The subsidy that's given to the
 9 department of transportation from the general fund
 10 is shown under the disbursements section.
 11 **Q.** And tell us why those enterprise funds receipts are
 12 not included in these figures.
 13 **A.** The department of transportation receipts are not
 14 included because it's the net subsidy that the
 15 general fund sends to the department of
 16 transportation. After they go through their own
 17 receipts and disbursements activities, the net
 18 subsidy that the general fund sends to the
 19 department of transportation are included here.
 20 With respect to the water and sewer department,
 21 there are receipts and disbursements activity are
 22 not included in here.
 23 **Q.** And you said I think earlier here that the
 24 departments of water and sewer are self sustaining
 25 or break even, correct?

1 **A.** Sure, I'll focus on your top table, which is for
 2 governmental activities of total revenues of a
 3 billion 537, compared to the total operating
 4 receipts of a billion 765.,
 5 **Q.** Right?
 6 **A.** The billion 765 includes cash receipts that the
 7 City collects in its property taxes line for
 8 distribution to other taxing authorities. If you
 9 go back to the cash flows, you will see there's a
 10 deduct of a significant amount of disbursements
 11 going to other taxing authorities for collections
 12 that have come -- so again, I just want to clarify.
 13 So we're tracking cash, so the City receives a
 14 gross tax collection, then distributes the taxes
 15 that it's collected on behalf of other entities for
 16 a net tax number. Generally that net tax number is
 17 what's reported in the CAFR as property tax
 18 revenue.
 19 **Q.** So the 1.5 figure reflects a net figure for the
 20 taxes that you just described; is that correct?
 21 **A.** That is correct.
 22 **Q.** And that's reflected below the revenue line there
 23 or it should be -- oh, forgive me. It's reflected
 24 in the tax figure itself?
 25 **A.** You are correct.

1 Q. And if you could drop the Exhibit 44, and just stay
2 with, yes, that page.

3 Just so I'm sure I understand it, the
4 figures on the top -- again, this is from CAFR, not
5 your document -- show that the governmental
6 activities column, the 1.5, is really just a --
7 that's far short of the total operational receipts
8 for the City of Detroit, correct?

9 A. For the reasons that I just clarified, yes.

10 Q. And that's the business type activities, those
11 are -- that's water, sewer, transportation?

12 A. I believe so. I have not focused on the business
13 type activity. I would believe so, but I'm not
14 sure.

15 Q. Isn't it true that when your engagement began in
16 2011, the business type activities were part of the
17 financial review that your team under took,
18 correct?

19 A. We were looking at the receipts and disbursements
20 activity of some of the enterprise funds, that is
21 correct.

22 Q. (By Mr. Ruegger): No further questions, Your
23 Honor.

24 THE COURT: Thank you, sir.

25 MR. RUEGGER: Thank you, Mr. Malhotra.

1 the financial impact, but I believe there was a
2 tentative agreement that was reached with the
3 Detroit Firefighters association and the City.

4 Q. Can I have 714, please? Mr. Malhotra, can you --
5 do you recognize Exhibit 714?

6 A. It's the tentative agreement to --

7 Q. And can you tell the Court, going down to the first
8 full paragraph in the agreement, with whom that
9 appears to be?

10 MR. STEWART: Your Honor, we've objected
11 to this as not in evidence. If she's laying a
12 foundation, no objection, but if she's going to
13 question the witness about the substance, we do
14 object.

15 MS. PATEK: I am just laying a
16 foundation, Your Honor.

17 THE COURT: Well, the question you asked
18 was not exactly a question to establish foundation.

19 BY MS. PATEK:

20 Q. Can you tell us what Exhibit 714 is?

21 A. It's the tentative agreement entered the 23rd of
22 March between the City of Detroit and the Detroit
23 Firefighters association.

24 Q. And can we flip to page six of that agreement,
25 please. I'm sorry, seven. Do you recognize in the

1 THE COURT: Any other questions for the
2 witness?

3 MS. PATEK: Good morning, Mr. Malhotra.
4 Barbara Patek. I represent the Detroit
5 Firefighters, the Detroit Police Officers
6 Association, and the Detroit Police Command
7 Officers Association and the Detroit Police,
8 Lieutenant & Sergeants Association. I have just a
9 few questions for you this morning.

10 EXAMINATION

11 BY MS. PATEK:

12 Q. Mr. Stewart asked you some questions about
13 negotiations with various City unions in late 2011
14 and 2012. Were you involved in similar
15 negotiations with the Detroit Firefighters
16 association during that same time period?

17 A. Yes, me and my team members were involved, yes.

18 Q. And was Chris Brown a member of that team?

19 A. Chris Brown was representing the City.

20 Q. And do you recall whether or not -- let's start
21 with the Detroit Firefighters -- whether or not you
22 were able to, your team, negotiate an agreement
23 with the firefighters that resulted in some cost
24 savings?

25 A. Yes, we did not negotiate it, we helped ascertain

1 upper left hand corner of that, the signature that
2 appears?

3 A. I think that is the signature of Chris Brown.

4 Q. And Chris Brown was at that time the chief
5 operating officer of the City of Detroit?

6 A. That is correct.

7 Q. Can we bring up 717?

8 Did you have similar discussions with the
9 Detroit Police Command Officers Association during
10 the same time period, 2011 and 2012?

11 A. We helped ascertain some of the financial impact of
12 those discussions.

13 Q. And you participated and were there in those
14 negotiations?

15 A. I was participating from a financial standpoint,
16 yes.

17 Q. Do you recall whether or not the agreement
18 negotiated with the Detroit police -- well, strike
19 that.

20 If we can jump ahead to the signature
21 page, which I believe on this one is page five.
22 And same question here. If you look on the left
23 hand side of the page about a little better than
24 halfway down on Exhibit 717, do you recognize that
25 signature?

1 **A.** I think that is the signature of Chris Brown.
 2 **Q.** And again, he was the chief operating officer of
 3 the City of Detroit at that time?
 4 **A.** Yes.
 5 **Q.** Do you recall whether or not as a result of the
 6 negotiation of the tentative agreement the
 7 agreement that resulted provided for some cost
 8 savings to the City of Detroit?
 9 **A.** It was a combination of cost savings and deferrals,
 10 yes.

11 MS. PATEK: I have nothing further at
 12 this time.

13 THE COURT: Any other questions for the
 14 witness? Any redirect?

15 MR. STEWART: Not very much, Your Honor.
 16 FURTHER EXAMINATION

17 BY MR. STEWART:

18 **Q.** Mr. Malhotra, when you were questioned, you
 19 mentioned something called structural cash flow
 20 problems.

21 **A.** Yes.

22 **Q.** What are structural cash flow problems?

23 **A.** As shown in the City's cash flow activity, for
 24 fiscal year 12 and 2013, the disbursements
 25 continued to exceed receipts for both of those

1 anything did you do in your financial analyses with
 2 respect to those savings?
 3 **A.** Those savings were clearly reflected in the cash
 4 activity on a monthly basis all through fiscal year
 5 2013, so the fiscal year 2013 would already reflect
 6 those cash savings that had occurred during that
 7 timeframe. We also adjusted for additional cost
 8 savings from a forecast basis over the forecast
 9 timeframe, which were already incorporated in the
 10 cash flow assumptions.

11 MR. STEWART: Thank you. I have no
 12 further questions.

13 THE COURT: All right. Sir, you may step
 14 down. Thank you very much. I will ask you to be
 15 here again tomorrow morning in case we have more
 16 questions for you.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: All right. Your next
 19 witness, sir?

20 MR. STEWART: Charles Moore.

21 Your Honor, before Mr. Moore comes into
 22 the courtroom, there's a foreseeable evidentiary
 23 point I think it might be best just to raise
 24 outside of the presence of the witness.

25 THE COURT: Okay.

1 years, which in my mind are structural cash flow
 2 issues, especially given the fact that the City had
 3 already made or gotten a lot of concessions from
 4 some of the active employees, but yet other than
 5 borrowing new cash or pooling accounts or
 6 deferrals, the core structural problems were -- or
 7 cash flow problems were that the disbursements
 8 continued to exceed the receipts.

9 **Q.** Now when you used that term, it was in connection
 10 with the questions you were asked about the
 11 monetization of City assets. What effect, if any,
 12 would the monetization of City assets have upon the
 13 City's structural cash flow problems?

14 **A.** None.

15 **Q.** Why not?

16 **A.** Because in my view, those are one time proceeds
 17 from asset sales that do not address the issues
 18 with respect to the ongoing operating disbursements
 19 and the legacy cost disbursements, the combination
 20 of which continue to exceed the receipts that the
 21 City generates from its operations.

22 **Q.** Now you also were asked at various times about cost
 23 savings that had been negotiated or realized or
 24 what have you in previous years. To the extent
 25 cost savings had been achieved by the City, what if

1 MR. STEWART: And here is what it is.
 2 Yesterday in the opening, I believe it was
 3 Mr. Ullman, and if I'm wrong, I apologize to
 4 Mr. Ullman, who in the course of his opening about
 5 the alleged bad faith of the Emergency Manager
 6 said -- and we have the imperfect transcript here
 7 with us, that Mr. Moore did not have a factual
 8 basis to state in his declaration that the pension
 9 claims were about \$3.5 million.

10 Because he opened on it, that is squarely
 11 now an issue in our case and I intend to ask Mr.
 12 Moore about that. And in particular, where that
 13 number came from. I'm going to ask him did he give
 14 that number to Mr. Orr and where did he get it from
 15 and what made him believe that was a reliable
 16 number. His answer is going to be that it was
 17 based upon reports given to him by the pension
 18 plan's actuaries, and he has those reports with him
 19 or they're exhibits here in our case is so I intend
 20 to ask him about that. I'm not certain there will
 21 be an objection to it, but if there is, I thought
 22 it would be more orderly to deal with it now
 23 instead of while he was testifying.

24 THE COURT: Any objections?

25 MR. RUEGGER: On behalf of the committee,

1 yes, Your Honor. I believe that's just an effort
 2 to introduce opinion testimony, expert testimony
 3 through a witness who is supposed to be a lay
 4 witness. And I don't believe Mr. Ullman's opening
 5 related to that figure opened any doors to allow
 6 that kind of expert testimony so we object. We can
 7 take it -- I'm sorry, Your Honor.

8 MR. STEWART: I didn't mean to interrupt.

9 THE COURT: I actually meant for him to
 10 remain quiet so you could finish.

11 MR. STEWART: I wasn't sure who was
 12 where.

13 MR. RUEGGER: We would simply object,
 14 Your Honor, for the reasons that I think we've
 15 raised with you in the past. It's just.

16 THE COURT: And please recall to speak
 17 right into the microphone.

18 Any other objections before I get back to
 19 Mr. Stewart?

20 MR. SHERWOOD: Yeah, on behalf of AFSCME,
 21 Jack Sherwood. We would join in the objection. We
 22 would submit that any testimony by Mr. Moore about
 23 pension underfunding is clearly -- I don't think
 24 there's any dispute that that type of testimony
 25 involves extremely specialized knowledge, training,

1 evidence, but for the limited purpose of addressing
 2 the challenge to Mr. Orr's credibility and good
 3 faith.

4 MR. STEWART: Mr. Moore is being brought
 5 to the courtroom from the hall because of the
 6 sequestration issue, Your Honor.

7 THE COURT: Yes. Step forward, please,
 8 sir.

9 (Witness sworn).

10 THE COURT: All right. Please sit down.

11 MR. STEWART: Good morning, Mr. Moore.

12 THE WITNESS: Good morning.

13 EXAMINATION

14 BY MR. STEWART:

15 Q. Could you please give the Court your full name and
 16 your home address?

17 A. Charles Moore, M-O-O-R-E, and I am out of
 18 Birmingham, Michigan.

19 Q. And are you employed, Mr. Moore?

20 A. Yes, sir.

21 Q. Where do you work?

22 A. Conway MacKenzie, Inc..

23 Q. And tell us, if you could, what Conway MacKenzie
 24 Inc. is?

25 A. We are primarily a turn around and restructuring

1 and is way beyond the understanding of the average
 2 person. It is without a doubt the subject of what
 3 should be expert testimony and for the City to try
 4 to use that testimony in this proceeding by a
 5 witness who is not been qualified as an expert, who
 6 has not rendered an expert report, is improper.

7 And only experts can rely on hearsay and
 8 that is what this witness would be doing. So on
 9 behalf of AFSCME, we would also oppose any
 10 testimony by this witness concerning the value of
 11 the pension underfunding. Thank you, Your Honor.

12 MR. CIANTRA: Thomas Ciantra for the UAW,
 13 Your Honor. We would join in those objections and
 14 note that Mr. Moore is not an actuary and has not
 15 been proffered. We understand as an expert
 16 qualified to provide actuarial testimony.

17 THE COURT: All right. Thank you. Go
 18 ahead. I didn't mean to cut you off.

19 MR. STEWART: I think there may be some
 20 confusion. We're not offering it for the truth,
 21 we're offering it for the good faith basis of
 22 Mr. Orr who has been accused of bad faith. So
 23 that -- that is the nature of the proffer and there
 24 was a hearsay exception for that.

25 THE COURT: Yes, the Court will admit the

1 firm.

2 Q. How long have you worked for Conway MacKenzie?

3 A. For approximately 12 years.

4 Q. Tell us if you could about your education, college

5 and after college, if you have it, post-graduate

6 work.

7 A. I have a bachelor's degree in accounting from
 8 Michigan State University, I have a master's of
 9 business administration from Michigan State
 10 University in professional accounting, and I have
 11 various certifications as well.

12 Q. Well, first of all, if you could give me the dates
 13 of your degrees from Michigan State.

14 A. Sure. I completed both degrees in 1994. It was a
 15 combined degree program and both degrees are
 16 granted at the same time.

17 Q. Then you mentioned your professional
 18 certifications. Could you tell us what those are?

19 A. Yes, sir. I am a certified public accountant, a
 20 certified turn around professional and I'm
 21 certified in financial forensics.

22 Q. And who does the certifications for those
 23 qualifications?

24 A. The American institute of certified public
 25 accountants is the CPA body, the turn around

1 management association is the body for the
 2 certified turn around professional designation, and
 3 then the AICPA, the American institute of certified
 4 public accountants also does the financial
 5 forensics certification.

6 **Q.** Tell us if you could about your employment since
 7 your graduation from Michigan State.

8 **A.** My first job was with Deloitte & Touche. I was
 9 employed there for approximately five and a half
 10 years. After that, I was at a company by the name
 11 of horizon technology, where I was chief financial
 12 officer, and then I joined Conway MacKenzie.

13 **Q.** And you told us you've been there 12 years.

14 **A.** Yes, sir.

15 **Q.** Where is Conway MacKenzie head quartered?

16 **A.** We are head quartered in Birmingham, Michigan.

17 **Q.** And what Conway MacKenzie office do you work out
 18 of?

19 **A.** I work out of the Birmingham Michigan office.

20 **Q.** What title do you hold at Conway MacKenzie?

21 **A.** I am senior managing director and shareholder.

22 **Q.** And tell us, if you could, what kind of practice
 23 you have at the firm.

24 **A.** My work primarily involves turn around
 25 restructuring services. I also perform services in

1 Michigan.

2 **Q.** And how long did you work with that commission?

3 **A.** It was approximately a two-year assignment.

4 **Q.** And what did you do in those two years?

5 **A.** The primary objective of the commission was to find
 6 operational efficiencies for the state government.

7 **Q.** And did there come a time in 2012 you began working
 8 for the City of Detroit?

9 **A.** Yes.

10 **Q.** And tell us about that work.

11 **A.** In late 2012, Conway MacKenzie did some pro bono
 12 work for the City of Detroit.

13 **Q.** And what was -- what work -- sorry.

14 **A.** What work did you do?

15 **A.** Conway MacKenzie was asked to perform analysis on
 16 certain areas related to cashiering operations.

17 **Q.** And can you tell us what a cashiering operation is?

18 **A.** Cashiering generally means areas where cash is
 19 coming into the City.

20 **Q.** And then what areas did you look into?

21 **A.** There were, as I mentioned, about five areas. Some
 22 were more of a focus than others. Municipal
 23 parking was a primary area of focus. We also
 24 looked at fire operations including the fire
 25 marshal, where fees are generated, and we also

1 other areas of our firm such as investment banking
 2 and litigation support.

3 **Q.** Could you, to the extent they're probably
 4 disclosable, could you tell us some of the clients
 5 you have worked for while at Conway MacKenzie?

6 **A.** Certainly. As you mentioned, there are client
 7 confidentiality restrictions, but publicly known
 8 clients recently would include the City of Detroit,
 9 Detroit Public Schools, the common wealth of Puerto
 10 Rico, Jefferson county Alabama, Greektown casino
 11 and hotel.

12 **Q.** Have your clients included unions?

13 **A.** Yes, sir.

14 **Q.** Which unions?

15 **A.** I have done work on behalf of AFSCME and the UAW.

16 **Q.** And what project was that on, if you can tell us?
 17 **A.** Yes. I was engaged jointly by AFSCME and the UAW
 18 related to the common wealth of Puerto Rico.

19 **Q.** Now in 2007, did you sit on a commission appointed
 20 by the Michigan government?

21 **A.** Yes, sir.

22 **Q.** Please tell us what that work involved.

23 **A.** The commission was the legislative commission on
 24 government efficiency. It was a nine person panel
 25 appointed by legislatures from the State of

1 looked at aspects of building safety and
 2 engineering.

3 **Q.** Did there come a time earlier this year when Conway
 4 MacKenzie was hired by the City of Detroit on a non
 5 pro bono basis to do work for the City?

6 **A.** Yes, sir.

7 **Q.** And how did that come about?

8 **A.** The City of Detroit issued an RFP, a request for
 9 proposal, in November of 2012 for restructuring
 10 services. Conway MacKenzie was one of the firms
 11 that responded to that RFP and was eventually
 12 engaged in January of 2013.

13 **Q.** And by restructuring services, what are you
 14 referring to?

15 **A.** Restructuring services is not really a defined
 16 term, but because of the financial distress that
 17 the City was experiencing, there was a desire to
 18 bring in outside expertise to help the City deal
 19 with that financial distress.

20 **Q.** And so Conway MacKenzie became a operational
 21 restructuring advisor to the City?

22 **A.** Yes, sir.

23 **Q.** What areas did you look at?

24 **A.** We've looked at pretty much every area of the
 25 City's operations.

1 **Q.** Okay. Let me ask about some in particular.

2 What if anything were you asked to do in
3 terms of looking at the City's operations in the
4 area of public safety?

5 **A.** Public safety involves multiple areas. It includes
6 police, fire, EMS, and department of Homeland
7 Security. We spent quite a bit of time
8 understanding how those departments function
9 currently, what are the major impediments to
10 improving their performance, and working with
11 individuals in those departments to develop a plan
12 for improving performance.

13 **Q.** Tell me if you could, how did you go about doing
14 this work?

15 **A.** The City has had multiple consultants performing
16 work over the last several years and so one of the
17 items that Conway MacKenzie did was to first
18 understand work that has been done in the past by
19 outside organizations, so that we could leverage
20 that work.

21 In addition to that, we worked very
22 closely with the people within the departments as
23 well as outside organizations to not only gather
24 facts in terms of how the department is performing
25 currently, but also to benchmark as to how the

1 of the document, that has a summary listing of
2 capital expenditures which you would be able to
3 look at from the standpoint of public safety.

4 **Q.** We will -- and we will do that once we cover all
5 these areas.

6 And then what did you do, if anything,
7 with regard to the water and sewer department?

8 **A.** Conway MacKenzie was asked to prepare a long
9 term -- long term being defined as ten-year
10 business plan for both the water and sewer funds.

11 **Q.** And what do you mean when you say business plan?
12 **A.** A business plan essentially involves how the
13 department will operate over a period of time,
14 anticipated revenues, expenses, as well as other
15 cash needs such as capital improvements.

16 **Q.** And did there come a time when you made a
17 recommendation to the City or to the emergency
18 manager based on the work that you had done?

19 **A.** Yes.

20 **Q.** And when did you make that recommendation?

21 **A.** At the end of the September of 2013, we delivered
22 that ten-year business plan for the water and sewer
23 funds.

24 **Q.** Now have you also been asked to look into the
25 monetization of the water and sewer department?

1 department stacks up compared to other areas that
2 would be relevant.

3 **Q.** Did there come a time when you made recommendations
4 to the City relating to public safety?

5 **A.** Yes, sir.

6 **Q.** And what did you recommend?

7 **A.** In the June time period of this year, there was a
8 document that was put together, a creditor
9 proposal, which incorporated our work and
10 specifically had initiatives related to public
11 safety in both restructuring expenses as well as
12 capital expenditures.

13 **Q.** And if we could let's put up exhibit -- if we
14 could, let's put up Exhibit 43.

15 Mr. Moore, is the creditor proposal you
16 referred to a few minutes ago?

17 **A.** This appears to be the title slide of it, yes.

18 **Q.** And could you direct us to the portion of this that
19 contains the recommendations and analysis you told
20 us about just a few minutes ago?

21 **A.** If I recall correctly, this document is about 130
22 pages. There are multiple areas where
23 recommendations related to public safety would
24 exist. If we're able to scroll through it, I could
25 get to those pages. I can tell you at the very end

1 **A.** Yes, sir.

2 **Q.** When did you begin your work looking into the
3 monetization of that department?

4 **A.** The business plan which our work began in July of
5 2013, the development of the business plan for the
6 water and sewer funds, was to be used as a basis
7 for evaluating strategic alternatives for the water
8 and sewer funds, and among those strategic
9 alternatives was the potential creation of a
10 regional water authority, and that was one area
11 that this business plan is currently being used.

12 **Q.** And how, if you can disclose to us, how would the
13 creation of a regional water and sewer authority
14 lead to its monetization?

15 **A.** What is currently being discussed -- and this is a
16 publicly available aspect, and I have to be careful
17 because the negotiations are on going and they are
18 confidential -- but what has been publicly
19 discussed is the form mischaracterization of a
20 regional authority would potentially involve the
21 City of Detroit leasing the water and sewer assets
22 to a regional authority and then receiving a
23 payment in return.

24 **Q.** So the monetization would take the form of lease
25 payments?

1 A. Yes, sir.
 2 Q. And did I hear you correctly, this is under
 3 discussion as we speak?
 4 A. Yes, sir.
 5 Q. Let me direct your attention to the Detroit
 6 department of transportation. What if anything was
 7 Conway MacKenzie asked to do with regard to DDOT?
 8 A. DDOT, as you mentioned, the department of
 9 transportation, is another department that we
 10 looked at and there are both short term as well as
 11 longer term items that we evaluated there. In the
 12 short term, we looked at ways of potentially
 13 improving the operation, perhaps through as an
 14 example fair increases to try to get more revenue
 15 into the department, identify ways that the
 16 department could operate more efficiently, as an
 17 example, getting more buses on the road,
 18 maintenance tends to be an issue in that
 19 department, and also the management of the
 20 department.

21 The longer term is still a question and
 22 that could involve eventually merging into more of
 23 a regional transportation authority.

24 Q. And that merger would be done for what reason?
 25 A. If the authority, if a regional authority could

1 A. The City takes in a variety of taxes. The primary
 2 items for taxes are property taxes, income taxes
 3 and utility taxes, among others, and we looked at
 4 those operations as to how they could be made more
 5 efficient as well as potentially increase the
 6 amount of revenue that was coming in.

7 Q. What did you find in the course of your
 8 investigation into the operations of the City's tax
 9 and revenue functions?

10 A. As it relates to property taxes, there had been
 11 efforts that were underway for the last few years
 12 where the City had been using some outside
 13 assistance to try to improve that area. The City,
 14 its ability to operate in the property tax area was
 15 very broken. Simple things such as getting bills
 16 out on time and to the right addresses as well as
 17 having the right number of resources available to
 18 accept payment were both significant deficiencies.

19 Q. Were measures implemented to correct those
 20 deficiencies?

21 A. Yes, sir.

22 Q. Tell us, if you could, what those measures were or
 23 are?

24 A. There are a number of things as it relates to
 25 property tax collections that are underway. First

1 provide better service to residents and it could
 2 also save the City money, then that certainly is
 3 something that we would look at.

4 Q. Were you also asked to look at the Detroit lighting
 5 authority?

6 A. Yes.

7 Q. What if anything did you do with regard to the
 8 Detroit lighting authority?

9 A. Mr. Stewart, I'll just clarify, you're referring to
 10 the public lighting authority.

11 Q. I stand corrected. Thank you?

12 A. So the public lighting authority was an authority
 13 established within the past year and the primary
 14 purpose of that lighting authority is to improve
 15 the lighting within the City. That needs to be
 16 funded and then the efforts to replace lights will
 17 occur. And as we worked with the City and to the
 18 state as it relates to the initial financing for
 19 the public lighting authority, which is ongoing
 20 right now, as well as we were involved with a
 21 request for proposal related to the management of
 22 the public lighting department.

23 Q. What were you asked to do, if anything, with regard
 24 to tax and revenue collection operations for the
 25 City?

1 of all, the property tax billing process has been
 2 improved significantly and so the bills have gone
 3 out on time. In addition to that, a number of
 4 additional resources were brought in in July and
 5 August of this year in order to be able to process
 6 the receipts, the payments that residents and
 7 others would make. We also changed some of the
 8 bank information so that payments would be received
 9 quicker as well as larger amounts for property tax
 10 payments could actually be received.

11 Q. And do I understand correctly you're continuing to
 12 work in the area?

13 A. Yes, sir.

14 Q. What did you do with regard to investigating the
 15 problem of housing blight here in the City of
 16 Detroit?

17 A. Blight, which is the term that most people use for
 18 structures as well as non structural areas that
 19 could be abandoned, burned out buildings, over
 20 growth of brush, certainly was an area that we kept
 21 running into in a number of the departments that
 22 would drive department activity. As an example,
 23 within the fire department, approximately
 24 60 percent of the fire department's runs relate to
 25 abandoned buildings. We also noticed on the

1 property tax side that areas where there was
 2 significant amounts of blight, both structural and
 3 non structural, that property taxes -- or the
 4 property tax values would deteriorate very quickly
 5 and so there was an initiative identified as part
 6 of the plan that was put together to eliminate the
 7 residential blight within the City of Detroit.

8 **Q. (By The Court):** Excuse me, you used the phrase non
 9 structural blight?

10 **A.** Yes, Your Honor.

11 THE COURT: What is that?

12 THE WITNESS: If you think of a lot, a
 13 residential lot, some of these lots don't have a
 14 structure on them anymore, however there's
 15 tremendous over growth, and so it hides what
 16 activity may be going on in that lot and that also
 17 can be an area that breeds crime.

18 BY MR. STEWART:

19 **Q.** Now have you heard the terms restructuring and
 20 reinvestment as used with respect to the work of
 21 the Emergency Manager?

22 **A.** Yes, sir.

23 **Q.** In fact, was that not something also discussed in
 24 the June 14 presentation?

25 **A.** Yes, sir.

1 **Q.** If you could, just explain to us what the revenue
 2 initiatives were. Actually, I should first ask,
 3 what were the amount of the expenses?

4 **A.** The amount of expenses added expenses over the
 5 ten-year period, which is the period that we
 6 developed for the restructuring and reinvestment
 7 plan, was approximately \$250 million.

8 **Q.** And what did you calculate the benefits would be
 9 financially from the restructuring?

10 **A.** We had other revenue initiatives, where revenue
 11 initiatives would revolve around areas where the
 12 City could receive additional cash in flows revenue
 13 of approximately \$280 million. There were some
 14 offsets to that as well. As we looked at changing
 15 some departments, it would result in some lower
 16 revenue as well and so as a result, there was net
 17 revenue improvements of about \$250 million as well.

18 **Q.** Okay. Now then the term was used reinvestment.

19 **A.** Yes, sir.

20 **Q.** Tell me -- tell the Court what you mean or meant
 21 when you used the term reinvestment.

22 **A.** Reinvestment is referred to as the category of
 23 planned expenditures that would relate to the
 24 infrastructure of the City. As an example, whether
 25 that is facility improvements, vehicle fleet,

1 **Q.** Could you tell us, please, what is meant by those
 2 terms? And let's start with restructuring?

3 **A.** Restructuring refers to how the departments
 4 operate, and when Conway MacKenzie first began its
 5 efforts with the departments, very often we find
 6 that there are areas where costs can be reduced and
 7 so that is a big focus in the turn around industry
 8 in general is reducing expenses. What we found
 9 within the departments is a number of the
 10 departments were severely broken. As a result of a
 11 number of cost cuts that have happened over the
 12 years, many departments couldn't perform the most
 13 basic functions. I referred to earlier just the
 14 inability to get property tax bills out. And so
 15 when we used the word restructuring, we're talking
 16 about changing how the department operates. And in
 17 many instances, what that actually revolved around
 18 was adding expenses so that departments could
 19 function and services could be performed.

20 **Q.** Were you able to determine whether the benefit from
 21 adding these employees would out weigh expense of
 22 hiring them?

23 **A.** In addition to the expenses that we identified, we
 24 also identified a number of revenue initiatives as
 25 well.

1 information technology, or even in the case of
 2 blight, spending on blight elimination.

3 **Q.** And why is reinvestment -- this was something you
 4 recommended?

5 **A.** Yes, sir.

6 **Q.** Why did you recommend it?

7 **A.** What became very clear is that over the years, as
 8 the City's finances suffered and deteriorated, that
 9 there was not the necessary reinvestment made in
 10 the structural assets. As an example, there are
 11 parking garages where large portions of the parking
 12 garages are actually blocked off because the
 13 structures themselves are in disrepair. And that's
 14 a source of revenue for the City and that unless
 15 those items are fixed, the City will have continued
 16 issues with just performing functions. And so what
 17 became very clear to Conway MacKenzie and formed
 18 the basis of our recommendations is that without
 19 spending money on the infrastructure, the ability
 20 to perform services and actually have hard assets
 21 where those services are performed would continue
 22 to be challenged.

23 **Q.** Now is the removal of blighted structures part of
 24 reinvestment?

25 **A.** Yes, sir.

1 **Q.** Okay. And why, as a matter of economics, is
2 removal of blighted properties -- well, you did
3 recommend removal of blighted properties, correct?
4 **A.** Blighted residential properties, yes.
5 **Q.** Why is that economically sensible to do?
6 **A.** As I mentioned before, blight seems to touch on a
7 number of the areas that we've looked at, whether
8 it is public safety, property taxes, or even
9 appearance, and so by spending money on eliminating
10 that, you change the dynamics of where people's
11 time gets spent as well as the basis for how the
12 City receives revenue.

13 **Q.** Did you have an estimate of what it would cost to
14 remove the blighted residential properties?

15 **A.** Yes, sir.

16 **Q.** And what was your estimate?

17 **A.** \$500 million during this time period.

18 **Q.** And the time period for removal was how many years?

19 **A.** We forecasted \$500 million over six years.

20 **Q.** And where did the number 500 million come from?

21 **A.** This was an estimate based on discussions with
22 people that have been involved with blight removal
23 in the past with in the City. The City has been
24 undertaking blight removal efforts for some time.

25 As well as outside parties that have been involved

1 **MR. STEWART:** At this point, yes.
2 **THE COURT:** All right. With that limited
3 purpose, the Court will overrule the objection.
4 **MR. STEWART:** I have one further question
5 in this area.

6 **BY MR. UPPER RIGHT:**

7 **Q.** Which is including the \$500 million for blight
8 removal, what was the total number you developed
9 for reinvestment and restructuring for the City?

10 **A.** It was approximately \$1 billion.

11 **Q.** Over ten years?

12 **A.** Over ten years, yes.

13 **A.** Excuse me, Mr. Stewart. In your question, did you
14 ask restructuring and reinvestment?

15 **Q.** I did?

16 **A.** Okay. The total with both of those would be
17 approximately \$1.25 billion. A billion on the
18 reinvestment.

19 **Q.** Okay. Let me move to another area.

20 As part of your work for the City or the
21 Emergency Manager, were you asked to do something
22 called tax benchmarking?

23 **A.** Yes, sir.

24 **Q.** Could you tell us what tax benchmarking is?

25 **A.** As part of the -- our initial efforts, when we were

1 **Q.** with blight removal as well.

2 Now --

3 **MR. RUEGGER:** I'm sorry, Mr. Stewart. I
4 would object to the last testimony as hearsay, Your
5 Honor.

6 **THE COURT:** Could you speak into the
7 microphone please?

8 **MR. RUEGGER:** Objection to the last
9 question and answer as it called for hearsay and
10 his answer was hearsay. I also want to object that
11 I believe this is bordering into expert testimony
12 and the witness is supposed to be a lay witness.
13 Is.

14 **MR. STEWART:** Your Honor, he made
15 recommendations that resulted in a number for
16 restructuring and reinvestment during the openings
17 yesterday that number too was challenged. In
18 particular, I remember one of the openings saying
19 how could the City in good faith budget for this
20 when it is not going to be able to pay others. So
21 as a matter of dealing with the good faith issue,
22 and the reliability of the data, I wanted to a dues
23 testimony of where these numbers came from.

24 **THE COURT:** Is that the sole purpose
25 you're offering this for?

1 looking at potential sources of cash, we looked at
2 the current level of taxation for residents in
3 businesses within the City of Detroit to understand
4 whether that -- whether those could be increased as
5 a potential source of cash and so we looked at City
6 of Detroit's taxation and we compared that to a few
7 of the surrounding communities.

8 **Q.** And what did you conclude?

9 **A.** That the City of Detroit residence were taxed far
10 more than surrounding communities and in fact had
11 the highest taxation within the State of Michigan.

12 **MR. STEWART:** Your Honor, this is a good
13 breaking point for me, but I'm prepared to continue
14 if the Court would like.

15 **THE COURT:** No, let's stop now for lunch
16 and reconvene at 1:45, please.

17 **COURT CLERK:** All rise. Court is in
18 recess.

19 (Whereupon a break was taken
20 from 12:15 p.m. to 1:45 p.m.)

21 **MR. IRWIN:** Good afternoon, Your Honor.
22 Geoff Irwin from Jones Day.

23 Might we return to a brief housekeeping
24 matter from yesterday morning to update the Court?

25 **THE COURT:** Sure, go ahead.

ROUGH - DAY 2

1 MR. IRWIN: In regard to the UAW motion
 2 to compel -- and I've conferred with Mr. Ciantra on
 3 this -- as you may recall, there were some Jones
 4 Day research memoranda that were the subject of
 5 motion to compel, and I indicated we would do our
 6 very best to investigate whether these memoranda
 7 were, in fact, shared with the state, and that if
 8 they were, we would, in fact, disclose them to
 9 objectors here.

10 We have done our very best and it is
 11 proving too difficult to know. People just don't
 12 recall as they look at individual memoranda whether
 13 they did or didn't.

14 So I have conferred with Mr. Ciantra. I
 15 am perfectly prepared to share them with the Court.
 16 I think the Court invited for us to submit them in
 17 camera for the Court to consider before deciding
 18 what to do, and I'm prepared to do that.

19 THE COURT: Okay. I will accept that and
 20 give you a decision tomorrow morning.

21 MR. CIANTRA: Thank you, Your Honor. In
 22 connection with that, I would just ask that the
 23 Court focus with respect to the cover email that
 24 was -- that described --

25 THE COURT: Is that there, too, or is

ROUGH - DAY 2

1 one second. I will look it up. I have the binder
 2 back here.

3 MR. CIANTRA: Thank you for the court's
 4 patience with this.

5 THE COURT: Ms. Green, take your time and
 6 look for that -- or do you have it right at hand?

7 MS. GREEN: I have it.

8 THE COURT: All right.

9 MS. GREEN: I believe it is 844. 844 in
 10 the Retirement Systems' binder.

11 THE COURT: Okay. We are all set. Thank
 12 you. And we got the envelope, so we're all set.

13 May we proceed?

14 You may proceed, sir.

15 MR. STEWART: Thank you, Your Honor.

16 BY MR. STEWART:

17 Q. Mr. Moore, let me direct your attention to June 14,
 18 2013. Did you have occasion that day to attend a
 19 meeting given by the Emergency Manager?

20 A. Yes, sir.

21 Q. What was the purpose of that meeting?

22 A. The purpose of that meeting was to present what is
 23 referred to as the proposal to creditors to various
 24 creditors of the City of Detroit.

25 Q. Can we put up Exhibit 43, please? And could you

ROUGH - DAY 2

1 that in evidence?

2 MR. CIANTRA: I believe it is --

3 MR. IRWIN: It's not in there.

4 MR. CIANTRA: It was read into the record
 5 yesterday by Ms. Green.

6 THE COURT: Okay. So I think I have --
 7 so it's in here, opposing parties opening
 8 statement --

9 MR. CIANTRA: Your Honor, I don't believe
 10 it is in there. I believe Ms. Green read it into
 11 the record in connection with her argument on the
 12 retirement system's motion.

13 THE COURT: Oh, okay. All right. So
 14 we'll have to get it from the transcript. Can you
 15 help us?

16 MS. GREEN: The date of the email is
 17 listed in the PowerPoint presentation and it's
 18 June 5, 2012. The whole email, I don't believe is
 19 in it, I think it's maybe a piece of it perhaps.

20 THE COURT: Let me just ask, does anyone
 21 have the email?

22 MS. GREEN: I do. It is in our exhibit
 23 binders that we gave to the Court.

24 THE COURT: Can you give me the number?

25 MS. GREEN: I will give you the number in

ROUGH - DAY 2

1 see on the monitor in front of you, Mr. Moore, a
 2 document, Exhibit 43?

3 A. Yes.

4 Q. And what is that?

5 A. This appears to be the title of that presentation.

6 Q. And that was a presentation made that day?

7 A. Yes, sir.

8 Q. What role if any did you have in making the
 9 presentation?

10 A. I spoke to a couple of parts in that presentation.

11 Q. How long was your part of the meeting?

12 A. I would estimate about 15 minutes or so.

13 Q. And what was the general reason for the meeting, if
 14 you know?

15 A. The general reason for the meeting as I indicated
 16 was to present the current situation that the City
 17 found itself in and the plan that the City wanted
 18 to pursue regarding restructuring and reinvestment,
 19 as well as to lay out a proposal as to how various
 20 classes of creditors would be treated.

21 Q. Were particular questions asked of you that day?

22 A. Not that I recall.

23 Q. Let me ask you if you could, to go to -- and let's
 24 also ask Lori -- to go to page 98 of the document,
 25 which you can see on your monitor. And is this

1 a -- actually, let's go one page earlier just so
2 the witness has his attention focused on it.

3 Do you see the page that's before you?

4 A. Yes.

5 Q. And go back to the page we just had. And this page
6 as well?

7 A. Yes.

8 Q. Do you understand what these pages depict?

9 A. Yes.

10 Q. And what do they depict?

11 A. This is a ten-year financial forecast indicating
12 the proximate amount of cash that was anticipated
13 to be available for unsecured claims.

14 MR. SHERWOOD: Your Honor, I object to
15 this testimony.

16 THE COURT: First of all, pull the mike
17 closer; second of all, please talk louder.

18 MR. SHERWOOD: I object on the grounds
19 that this is improper opinion testimony from a non
20 expert.

21 THE COURT: Well, the last question
22 certainly didn't ask him an opinion, so to that
23 extent it's overruled. When you think there is an
24 opinion being given, I invite your objection at
25 that time.

1 Q. Unfunded in what sense?

2 A. The liability for the pension system in excess of
3 the plan assets of the pension system.

4 Q. And those two numbers add up to about
5 \$3.474 billion?

6 A. Yes, sir.

7 Q. Do you know where that number came from?

8 A. Yes.

9 Q. Where did it come from?

10 A. From me.

11 Q. And why -- who did you give it to?

12 A. I gave it to Mr. Malhotra.

13 Q. And anyone else?

14 A. I gave it to the other restructuring advise theirs
15 would have put it into the document.

16 Q. And did you also share it with Mr. Orr?

17 A. Yes, sir.

18 Q. And where did you get it from?

19 A. I got it from Milliman.

20 Q. And for the record, who is Milliman?

21 A. Milliman is the actuary engaged by the City of
22 Detroit.

23 Q. Do you know how Milliman derived those numbers?

24 A. Yes.

25 Q. And could you tell us briefly how they did it and

1 MR. SHERWOOD: Thank you, Your Honor.

2 BY MR. STEWART:

3 Q. Now blow up the box there. Do you see the part of
4 the page which has now been expanded to fill the
5 monitor screen?

6 A. Yes. This is a listing of the estimated unsecured
7 claims as of June 14, 2013.

8 Q. And when you use the phrase "unsecured claims,"
9 what are you referring to?

10 A. This is based on claims for which there did not
11 appear to be a specific security interest.

12 Q. Claims by who?

13 A. Creditors of the City of Detroit.

14 Q. And claims against who?

15 A. Against the City of Detroit.

16 Q. Let me ask you to direct your attention to the line
17 that says unsecured pension and OPEB. Do you see
18 that?

19 A. Yes.

20 Q. And then do you see the area that has now just been
21 highlighted for you?

22 A. Yes.

23 Q. And what is that?

24 A. These are the estimated unfunded amounts related to
25 the two pension systems of the City of Detroit.

1 then I'm going to show you some exhibits.

2 MR. RUEGGER: With respect, Mr. Stewart,
3 objection.

4 THE COURT: Into the microphone please.

5 MR. RUEGGER: This is getting into expert
6 opinion testimony, Your Honor. We object.

7 THE COURT: The objection is overruled.

8 THE WITNESS: Would you please restate
9 the question?

10 BY MR. STEWART:

11 Q. Could you tell us how Milliman, to your knowledge,
12 came up with these numbers?

13 A. Yes.

14 Q. The restructuring team has a task force?

15 THE COURT: Excuse me one second. How do
16 you know how Milliman came up with these numbers?

17 THE WITNESS: Your Honor, I lead a task
18 force for the City of Detroit on pensions and I
19 specifically received this information from
20 Milliman.

21 THE COURT: Okay. You may answer the
22 question.

23 THE WITNESS: The task force that I
24 indicated that is specifically focused on pensions
25 asked Milliman to run a variety of scenarios.

1 BY MR. STEWART:

2 Q. Now let me -- and do you understand how Milliman in
3 these scenarios came up with its numbers?

4 A. Yes, sir.

5 Q. And how did they come up with their numbers?

6 A. Milliman used the Gabriel Roeder actuarial
7 valuation.

8 Q. Stop you there. Who is Gabriel Roeder?

9 A. Gabriel Roeder is the actuary that is used by each
10 pension system.

11 MR. STEWART: Sorry to interrupt you,
12 but --

13 MR. CIANTRA: Your Honor, I'm going to
14 pose a hearsay objection on this. He is
15 testifying to out-of-court statements presumably by
16 actuaries at Milliman as to how they provide the
17 numbers. It's rank hearsay.

18 THE COURT: And who has Milliman retained
19 by?

20 MR. CIANTRA: Milliman was retained by
21 the City of Detroit.

22 THE COURT: Who was Milliman retained by?

23 MR. CIANTRA: The City of Detroit.

24 THE COURT: Is that your understanding?

25 MR. STEWART: Yes, it's being offered for

1 He's not an actuary, he's not being proffered for
2 actuarial expertise. I don't know what the basis
3 of him offering that opinion would be.

4 MR. STEWART: Foundational question, Your
5 Honor, but also, once again, since what we're
6 talking about is good faith reliance, an element of
7 reliance is.

8 THE COURT: Here's a better question:
9 Did you express to Mr. Orr any doubt about the
10 reliability of the information that you had given
11 him?

12 THE WITNESS: No, Your Honor.

13 BY MR. STEWART:

14 Q. Let me put up page one of Exhibit 69, please. Can
15 you tell me what Exhibit 69 is?

16 A. This is the draft actuarial valuation report from
17 Gabriel Roeder for the general retirement system of
18 the City of Detroit as of June 30, 2012.

19 Q. And the general retirement system is the system
20 representing non uniformed employees of the City of
21 Detroit?

22 A. Yes, sir.

23 Q. Do you know what percentage of those non uniformed
24 employees worked for the department of water and
25 sewer?

1 state of mind. As we -- before he took the stand,
2 I raised this saying we're not offering these for
3 the truth, we're offering these numbers to rebut
4 the argument that has been made that about Mr. Orr
5 did not have a good faith basis in this document
6 and other documents representing that the pension
7 claims would be 3.5 million dollars.

8 THE COURT: Did you tell Milliman -- I'm
9 sorry, did you tell Mr. Orr how Milliman came up
10 with these numbers?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Tell us what you
13 told Mr. Orr.

14 THE WITNESS: I told Mr. Orr that
15 Milliman had taken the Gabriel Roeder actuarial
16 valuation and modified a couple of assumptions
17 based on that actuarial valuation.

18 THE COURT: All right. The Court will
19 receive that testimony. Again, only for purposes
20 of demonstrating what Mr. Orr was told, not for the
21 truth of it.

22 BY MR. STEWART:

23 Q. And did you have reason to believe that Milliman's
24 conclusions were reliable?

25 MR. CIANTRA: Again, object to this.

1 A. Approximately 40 percent of the contributions that
2 typically are made relate to water and sewer
3 employees.

4 Q. Now let me ask if we could please put up page three
5 of this document?

6 THE COURT: Is this in evidence?

7 MR. STEWART: It is -- yes, Your Honor.

8 It has not been objected to.

9 BY MR. STEWART:

10 Q. And in particular, could I ask the Court technician
11 to expand the box at the bottom. First of all,
12 have you seen this document before, Mr. Moore?

13 A. Yes.

14 Q. And tell us what it is?

15 A. This is the actuarial valuation as of June 30 of
16 2012 in draft and this indicates what the estimated
17 unfunded actuarial accrued liability is as of that
18 date in the previous year.

19 Q. And how does one get from the information you see
20 here for the GRS, in other words, the general
21 retirement system, to the amount of the unsecured
22 claim that GRS would have?

23 A. Focusing on the column on the left, which is as of
24 June 30 of 2012, the 800 -- approximately
25 \$830 million.

1 **Q.** Go back please.
 2 **A.** The approximately \$830 million in the column on the
 3 left is the UAAL, unfunded actuarial accrued
 4 liabilities.
 5 **Q.** And may I stop you there and ask you to explain to
 6 us what a UAAL is?
 7 **A.** A UAAL is based on an actuarial calculation for
 8 liabilities and assets. So the first item in terms
 9 of the unsecured claim amount was to look at the
 10 market value of the assets rather than the
 11 actuarial value of the assets. The actuarial value
 12 of the assets at that date was approximately
 13 \$2.8 million, the actual market value, so the value
 14 of the assets at that point in time, was actually
 15 approximately \$650 million lower than what was
 16 showed for actuarial purposes.

17 In addition to that, the top line, the
 18 actuarial accrued liabilities, is based on a
 19 discount rate and the discount rate that is used
 20 here is 7.9 percent, and in the claim unsecured
 21 claim calculation, a discount rate of seven percent
 22 was used.

23 **Q.** And so how using those numbers do you come up with
 24 the amount of the claim -- the unsecured claim of
 25 this pension plan against the City?

1 page of the document again.
 2 BY MR. STEWART:
 3 **Q.** This is a document you've seen before, Mr. Moore?
 4 **A.** Yes, sir.
 5 **Q.** How did it come to you?
 6 **A.** I received this as part of my role on the pension
 7 task force.
 8 **Q.** And you received it from who?
 9 **A.** We received this report from the retirement system
 10 itself.
 11 **Q.** And Gabriel Roeder is employed by the retirement
 12 system?
 13 **A.** Yes, sir.
 14 **Q.** And what use did you make of the document?
 15 **A.** I reviewed this document for actuarial information
 16 related to the general retirement system.
 17 MR. STEWART: I would move it into
 18 evidence, Your Honor, on the grounds it is if
 19 nothing else an admission of a party owe opponent
 20 since the GRS is an object err here and this is an
 21 agent of an objector.
 22 MR. RUEGGER: It's hearsay, expert
 23 opinion and coming in through a lay opinions, Your
 24 Honor. We press the objection.
 25 THE COURT: The objection is overruled.

1 **A.** Yes, sir.
 2 **Q.** So tell me how you then take those numbers and turn
 3 it into a figure.
 4 **A.** The accrued asset number, 2. --
 5 MR. RUEGGER: Objection, Your Honor. I
 6 apologize for the tardiness on this, but I believe
 7 Mr. Stew was misinformed. Sixty-nine was objected
 8 to on hearsay and expert opinion and foundation
 9 grounds?

10 MR. STEWART: Then I stand corrected. I
 11 had been told it had not been objected to.

12 MR. RUEGGER: We would press those
 13 objections, Your Honor.

14 MR. STEWART: It's confirmed, it was
 15 indeed on thed to. However, Your Honor, I believe
 16 the witness has laid a foundation for it as a
 17 document he has seen, has worked with. Let me ask
 18 two more questions and then I'm going to move it
 19 into evidence so that it can be.

20 MR. RUEGGER: I object to the testimony.

21 MR. STEWART: Foundation testimony?

22 THE COURT: I'll let the witness testify
 23 or be asked about foundational questions to see if
 24 it's admissible and then we'll move on from there.

25 MR. STEWART: So let's put up the cover

1 The document, 69, is admitted in evidence.
 2 BY MR. STEWART:
 3 **Q.** Let's please go back to page 3. So Mr. Moore,
 4 let's go back to our calculation. We have at the
 5 bottom unfunded actuarial accrued liabilities and
 6 then two numbers above it. From the numbers you
 7 have described to us --
 8 THE COURT: I want to be sure what we're
 9 doing here again.
 10 MR. STEWART: Yes.
 11 THE COURT: This evidence is solely in
 12 relation to the representation that Mr. Orr made to
 13 the Court regarding the unfunded pension liability.
 14 MR. STEWART: Yes.
 15 THE COURT: Well, in that regard, again,
 16 I'm much more interested in what the witness told
 17 Mr. Orr than how he did his calculations or really
 18 anything else because otherwise it sounds too much
 19 like him testifying as an expert.
 20 MR. STEWART: Let's take the document
 21 down. I think Your Honor already asked that
 22 question of the witness, but.
 23 THE COURT: Let's just be sure.
 24 MR. STEWART: Yes.
 25 THE COURT: Did you tell Mr. Orr anything

1 about how you made the adjustments that you made?
 2 THE WITNESS: Yes, sir.
 3 THE COURT: What did you tell him?
 4 THE WITNESS: I told Mr. Orr that two
 5 variables were adjusted based on the Gabriel Roeder
 6 actuarial valuation and that included the using the
 7 market value of the assets as well as using a
 8 different discount rate.

9 THE COURT: And did you disclose anything
 10 more specific about those two adjustments than just
 11 that much?

12 THE WITNESS: No, sir.

13 THE COURT: All right. That's it.

14 BY MR. STEWART:

15 Q. Let me then wrap up very quickly with this witness,
 16 Your Honor. Did you attend other meetings with --
 17 held on behalf of the Emergency Manager with
 18 creditors of the City?

19 A. During what time period.

20 Q. After June 14?

21 A. Yes, sir.

22 Q. Okay. And let me direct your attention in
 23 particular to a meeting held on June 20th. Do you
 24 remember two meetings held that day?

25 A. Yes, sir.

1 to the City was we want to move forward with these
 2 discussions and determine whether or not something
 3 could actually occur with all the parties outside
 4 of Court.

5 Q. Thank you. Could we put Exhibit 70 on the screen,
 6 please?

7 Mr. Moore, Exhibit 70 for identification
 8 has been placed on the screen before you. Have you
 9 seen this document before?

10 A. Yes, sir.

11 Q. What is it?

12 A. This is the actuarial valuation report as of
 13 June 30 of 2012 for the police and fire retirement
 14 system.

15 Q. And who was it prepared by?

16 A. By Gabriel Roeder.

17 Q. And how did it come to you?

18 A. Through my role on the task force, pension task
 19 force.

20 Q. And what use did you make of the document?

21 A. I used this document to obtain actuarial and other
 22 information on the pension system.

23 MR. STEWART: Your Honor, I would move
 24 Exhibit 70 into evidence on the same grounds as
 25 recite in addition moving Exhibit 69 into evidence.

1 Q. One in the morning and one in the afternoon?

2 A. Yes.

3 Q. Let me ask you about the afternoon meeting. Was
 4 that a meeting with representatives of the non
 5 uniformed employees of the City.

6 A. I can't recall -- I think the non uniform was the
 7 first meeting and then uniformed was the second
 8 meeting.

9 Q. And what was the purpose of those meetings?

10 A. The purpose of those meetings was to lay out
 11 information more information from the June 14th
 12 presentation regarding financial situation that the
 13 City was in and then specific information related
 14 to healthcare and pension obligations.

15 Q. Do you remember any questions being asked at either
 16 of those two meetings?

17 A. Yes.

18 Q. What do you remember?

19 A. I recall one question from an attorney representing
 20 the UAW questioning how we -- we being the City of
 21 Detroit -- would be able to accomplish some of what
 22 was in the proposal outside of bankruptcy.

23 Q. And do you remember what answer was given to that
 24 person?

25 A. I believe that the answer that was given by counsel

1 MR. RUEGGER: Your Honor, I object based
 2 on the statements that Your Honor just explained,
 3 the limited use of these documents and this
 4 testimony, I don't see how this document moves it
 5 along. It's a hearsay and expert opinion just as
 6 69 is, but as Your Honor said, if the issue is
 7 really what Mr. Moore said to Mr. Orr, I'm not sure
 8 how this document adds to the evidence. So we
 9 object on that grounds.

10 THE COURT: All right. The objection is
 11 overruled. Exhibit 70 is admitted into evidence
 12 for all purposes.

13 MR. STEWART: Thank you. No further
 14 questions, Your Honor.

15 MR. CIANTRA: The first thing I want to
 16 do is make sure this microphone is positioned
 17 correctly.

18 THE COURT: It sounds good. Yes.

19 MR. CIANTRA: Before I even say my name
 20 for the record, I want to make sure.

21 THE COURT: I appreciate that very much,
 22 sir.

23 MR. CIANTRA: Good afternoon, Mr. Moore.
 24 I'm Thomas Ciantra, as you know. I'm the lawyer
 25 for the UAW.

1 THE WITNESS: Yes, sir.

2 EXAMINATION

3 BY MR. CIANTRA:

4 Q. Now you had mentioned in your direct examination
5 that you formed part of a pension task force; is
6 that correct?

7 A. Yes, sir.

8 Q. And that task force was created when?

9 A. In February or March of this year.

10 Q. So around the time the Emergency Manager was
11 appointed, would that be correct?

12 A. Prior to the Emergency Manager being appointed.

13 Q. All right. Let's focus on from the time the
14 Emergency Manager was appointed. You remained on
15 the task force obviously?

16 A. Yes, sir.

17 Q. There were also individuals from the Milliman
18 actuarial consulting firm who were on the task
19 force?

20 A. Yes, sir.

21 Q. And there were lawyers from the Jones Day law firm
22 that were on the task force?

23 A. Yes.

24 Q. And that task force met on a regular basis?

25 A. Met or had calls, yes.

1 other members of the task force present at that in
2 person meeting?

3 A. Well, there were multiple in person meetings. I
4 can't recall if anyone else from the task force was
5 in the in person meetings or not.

6 Q. Okay. Were lawyers from Jones Day in those
7 meetings with Mr. Orr?

8 A. Yes.

9 MR. CIANTRA: All right. I'm going to
10 move, Your Honor, that his testimony a with respect
11 to those meetings be struck because it is in effect
12 a selective waiver of attorney-client privilege
13 that they are engaging in here. We have had
14 multiple deposition questions cut off on the
15 grounds of attorney-client privilege with respect
16 to the workings of this task force and other areas
17 and they are obviously now making selective use of
18 this to get in those figures. He has just
19 testified that counsel for Jones Day was present in
20 the meeting, he testified about it in direct, we
21 would request that it be struck.

22 THE COURT: Can you give me an example of
23 such an assertion?

24 MR. CIANTRA: From prior testimony?

25 THE COURT: You said that attorney-client

1 Q. And on some of those occasions, was Mr. Orr
2 included in those task force meetings?

3 A. Not that I recall.

4 Q. Now you testified that there was a meeting with
5 Mr. Orr where you reviewed with him the
6 approximately \$3.5 billion number with respect to
7 the pension plan under funding; is that correct?

8 A. Yes, sir.

9 Q. There was one meeting or was that multiple
10 meetings?

11 A. There were multiple meetings where we discussed
12 this number in combination with other numbers.

13 Q. Okay. And at the meeting where you discussed how
14 the number -- how the -- let me step back.

15 The number was actually -- you didn't
16 actually do those calculations, the Milliman
17 actuarial firm did those calculations, correct?

18 A. Correct.

19 Q. So you were relaying to Mr. Orr what the results of
20 the work of the Milliman firm had been?

21 A. Yes.

22 Q. And you did that at a in person meeting?

23 A. There were both in person meetings and calls with
24 Mr. or.

25 Q. Lets focus on the in person meetings. Were the

1 privilege had been asserted in relation to that
2 meeting. I'm asking you for an example.

3 MR. CIANTRA: Well, in relation to the
4 workings of the pension task force.

5 THE COURT: Give me an example.

6 MR. CIANTRA: I question Mr. Moore in his
7 deposition with respect to deliberations of that
8 pension task force concerning the provisions of the
9 Michigan constitution that protect pension
10 obligations and the inquiry was stopped on the
11 grounds of attorney-client privilege.

12 THE COURT: Have you got it? Can you
13 show me?

14 MR. CIANTRA: If this had an index, it
15 would be easier. If you give me a moment, Your
16 Honor.

17 THE COURT: Sure. Well, let me ask you
18 to pause from that and ask you a slightly different
19 question or very different question, sir.

20 MR. CIANTRA: Sure.

21 THE COURT: Why wouldn't the remedy here
22 be, based on the testimony that was given, that
23 privilege is waived as of now and that therefore
24 you can ask any questions without fear of privilege
25 being asserted or at least a privilege claim

1 sustained.

2 MR. CIANTRA: Well, Your Honor, the
3 problem with that is that there's been weeks of
4 discovery and deposition testimony that's been
5 taken where we have had questions cut off on the
6 grounds of privilege, so I don't -- I can't do a
7 redo of that at this point.

8 THE COURT: He's right here. Redo all
9 you like.

10 MR. CIANTRA: Well, with respect to this
11 question, I can, but not with respect to questions
12 or documents that weren't produced during the
13 course of this litigation, I can't.

14 THE COURT: Can you identify a document
15 that wasn't produced that related to this pension
16 task force?

17 MR. CIANTRA: There are multiple
18 documents that --

19 THE COURT: Can you identify one?

20 MR. CIANTRA: I can find the log of their
21 production. There are multiple documents that were
22 withheld. I don't have it right with me.

23 THE COURT: It doesn't sound like you're
24 quite ready to deal with your questions relating to
25 your request here so let's move on and I will

1 manager's of the view that there is no possibility
2 for material increases in the tax revenues that are
3 coming into the City; is that correct?

4 A. I testified that we looked into that and that was
5 our conclusion, yes.

6 Q. You can't raise taxes to pay for that?
7 A. Yes.

8 Q. And it's also correct, isn't it, that -- well, over
9 the past ten years, there's been a substantial
10 reduction in the amount of revenue sharing that's
11 come to the City of Detroit from the State of
12 Michigan?

13 A. That's correct, the revenue sharing has decreased,
14 yes.

15 Q. And that is discussed in the proposal for
16 creditors, correct?

17 A. Yes.

18 Q. And let's just for the record, do you have it?

19 It's Exhibit 43. City Exhibit 43. Do you have it

20 there?

21 A. Nothing is up yet.

22 THE COURT: Is it on the table there?

23 THE WITNESS: Yes, sir, I have it.

24 BY MR. CIANTRA:

25 Q. So if we turn to page four of the document, the

1 consider your request to strike the testimony when
2 you are ready to argue it.

3 MR. CIANTRA: Thank you, Your Honor.

4 BY MR. CIANTRA:

5 Q. I'm going to ask you some questions, Mr. Moore,
6 with respect to the City proposal for its
7 creditors, the June 14th proposal. Now with
8 respect to that proposal, I understand an important
9 component of it is reinvestment in the
10 infrastructure and operations of the City of
11 Detroit?

12 A. Yes, sir.

13 Q. And we are projecting approximately \$1 billion
14 price tag for that, for that program over the next
15 ten years?

16 A. 1 billion on the reinvestment, if you will, the
17 capital expenditures, yes.

18 Q. And then there's an additional quarter of a billion
19 dollars with respect to other restructuring
20 initiatives?

21 A. There are -- there is -- yes, that's correct, about
22 a quarter of a billion dollars for expenses. There
23 are also about a quarter of the billion dollars in
24 revenue initiatives.

25 Q. Okay. And you also indicated that the emergency

1 bullet point at the top of that page is state
2 revenue sharing. Do you see that?

3 A. Yes.

4 Q. And so that quantifies that you've seen
5 approximately a 48 percent reduction in the City in
6 approximately 48 percent reduction in the amount of
7 revenue sharing it's received from the State of
8 Michigan since fiscal year 2002?

9 A. Yes.

10 Q. And you're off approximately 30.6 percent since
11 2008?

12 A. There's been a reduction of 30.6 percent since
13 2008, yes, that's correct.

14 Q. And would you agree those amounts are material?

15 A. They've certainly have been -- had a significant
16 impact on the City's revenue, yes.

17 Q. Okay. And part of the projection that is included
18 in the proposal for creditors Exhibit 43 are
19 projections with respect to the amount of the
20 revenue sharing going forward, is that correct?

21 A. Yes.

22 Q. And that is, if you would turn to page 90 of that
23 document.

24 A. Yes, sir.

25 Q. Towards the top of the page, you list the

1 preliminary forecast revenues and the revenue
 2 sharing is the, I guess the second item there,
 3 correct?

4 **A.** Yes.

5 **Q.** So would I be correct that year over year you're
 6 projecting an increase in that of it looks like a
 7 little over one percent?

8 **A.** That's about right, yes.

9 **Q.** Is that a number you calculated or is that part of
 10 your contribution to this report?

11 **A.** No, sir, I did not calculate that.

12 **Q.** But that's -- that was the assumption that the
 13 increase in the revenue sharing would be
 14 approximately one percent year over year?

15 **A.** I can't speak to the assumption, but the number
 16 looks like about one percent per year.

17 **Q.** Yeah, that's the arithmetic?

18 **A.** Yes.

19 **Q.** And the revenues of the City are -- other revenues
 20 of the City are also projected there, correct?

21 **A.** Yes, sir.

22 **Q.** And you have there on the first line the municipal
 23 income tax?

24 **A.** Yes.

25 **Q.** And the income tax in the City of Detroit now is

1 billion dollars, where is the money coming from
 2 other than from cut inning those areas?

3 **A.** The projections show approximately \$250 million in
 4 additional revenue that I indicated as well as
 5 \$350 million in also other categories of additional
 6 revenue which total about \$600 million in new
 7 revenue during this ten-year period.

8 **Q.** Okay. So you've got 600 million new and you've got
 9 the rest of that 1.25 and that's coming from
 10 reductions in the legacy cost?

11 **A.** Could you define legacy costs?

12 **Q.** Sure. The pensions that are owed to the people I
 13 represent, their post retirement benefits and the
 14 bondholders, the debt on the existing bonds.

15 **A.** Yes, those three categories, that is what the
 16 proposal indicates is an adjustment to those
 17 categories.

18 **Q.** Let me go back to Exhibit 43 just for a moment and
 19 ask you to turn to page 109 of that document. And
 20 there's a bullet point on that page, a little more
 21 than halfway down, claims for unfunded pension
 22 liabilities.

23 **A.** Yes, sir.

24 **Q.** And in the first bullet point, it indicates that
 25 because of the preliminary analysis with respect to

1 **A.** the highest in the State of Michigan?

2 **Q.** Yes, for individuals, the income tax rate for
 3 residents is the highest in the State of Michigan.

4 **Q.** Okay. So you're seeing -- I'm looking there at
 5 increases in the order of a couple of percent per
 6 year?

7 **A.** Yes, sir.

8 **Q.** So that's -- those two items are staying -- well,
 9 one would agree that probably not exceeding the
 10 rate of inflation, correct?

11 **A.** I'm not sure because I did not put together an
 12 assumption regarding inflation.

13 **Q.** Okay. But one or two percent increases year over
 14 year?

15 **A.** That's what appears to be the math, yes.

16 **Q.** So sort of putting it together, it would be
 17 correct, isn't it, that the source of the funding
 18 for the reinvestment and restructuring that the
 19 City would like to undertake here is basically
 20 going to come from a reduction in the legacy costs,
 21 the bond debt and the accrued pension and other
 22 post retirement benefits?

23 **A.** I don't think that's the case.

24 **Q.** Where's the money coming from? If the revenues are
 25 staying the same and you're coming up with an extra

1 the underfunding, that the City will not be making
 2 future contributions to the retirement plans for
 3 its employees. Is that correct?

4 **A.** Yes.

5 **Q.** And that on account of that, in the third bullet
 6 point it says there must be significant cuts in
 7 accrued vested pension amounts for both active and
 8 currently retired persons. Do you see that?

9 **A.** Yes.

10 **Q.** And you were at the June 14th meeting where this
 11 was presented to -- well, among others -- labor
 12 unions and other organizations representing
 13 retirees, correct?

14 **A.** Yes.

15 **Q.** And I am correct that there was no number that was
 16 put on the level of cuts that were -- that the City
 17 believed were necessary under this plan, correct?

18 **A.** Correct.

19 **Q.** And in fact, as you sit here today, there has been
 20 no number that has been put on that, correct?

21 **A.** Correct.

22 MR. CIANTRA: I have no further
 23 questions. Thank you.

24 THE COURT: Thank you, sir.

25 MR. CIANTRA: Your Honor, if I could

1 just address that privilege issue. And this is at
 2 Mr. Moore's deposition that was taken on the 18th
 3 of September, and I can read from the transcript if
 4 Your Honor would.

5 THE COURT: Go ahead.

6 MR. STEWART: What page, please?

7 MR. CIANTRA: Certainly. This -- I'm
 8 looking at the minusccript of the transcript, page
 9 154, beginning the bottom of the page --

10 THE COURT: Is there a line number?

11 MR. CIANTRA: Yeah, I'm looking. Let me
 12 see where to start here.

13 THE COURT: Here we have it on the
 14 screen.

15 MR. CIANTRA: Beginning on page 153.
 16 We'll see at page line 14, actually I'm asking the
 17 questions. You indicated earlier that you were
 18 part of a pension task force that has been
 19 considering pension issues since I guess the
 20 springs of this this year. And my question is
 21 during the discussions, the meetings of that task
 22 force, have you -- has that provision of the
 23 Michigan State constitution and that obviously is
 24 Article IX, section 24 -- been a subject of
 25 discussion? Witness answers yes. And he goes on.

1 not necessarily what your counsel might have
 2 advised. But to the extent that the concensus was
 3 reached and that concensus was based on legal
 4 advice, that consensus would be in my judgment
 5 privileged. So that's why I asked him. And he
 6 goes on, and then at the end, if so I would
 7 instruct you, Mr. Moore, not to expound.

8 So our inquiry with respect to the
 9 consensus that was developed by this pension task
 10 force was cut off by attorney-client privilege
 11 assertions yet the witness has testified with
 12 respect to conversations in the presence of lawyers
 13 for the City with respect to where these actuarial
 14 numbers came from. It seems to be just a selective
 15 use of the privilege depending on circumstance and
 16 it's put news a difficult position, Your Honor,
 17 because I, you know, as I said before, I can't turn
 18 back the time -- the hands of time and, you know,
 19 retake Mr. Moore's deposition, go back and look at
 20 the, you know -- review the tense of thousands of
 21 documents that is have been produced to deal with
 22 it.

23 THE COURT: All right. Thank you.

24 MR. CIANTRA: It just seems unfair.

25 THE COURT: Mr. Stewart?

1 And then continuing on to page 155 at the top, line
 2 one, and was there more than one discussion or did
 3 that come up on just one occasion? It probably
 4 came up more than -- I seem to recall more than one
 5 occasion where a discussion about whether the City
 6 would have to file for Chapter 9 took place and the
 7 pension element was discussed. And what was the --
 8 was the consensus that was developed with respect
 9 to that issue? And Mr. Miller, counsel for the
 10 City, responds. I'm going to object and ask the
 11 witness before he answers that question whether in
 12 connection with any discussion that might have led
 13 to a consensus that discussion included lawyers and
 14 counsel.

15 Mr. Ciantra, I'm not asking him.

16 And counsel that was provided by those
 17 lawyers.

18 I'm not asking about discussion with
 19 counsel, I'm asking whether this task force that
 20 was looking at the pension issues reached a
 21 consensus and it continues.

22 But the task force included counsel. He
 23 testified to that.

24 And then he goes -- and then I interject,
 25 I'm interested in whether there was a discussion,

1 MR. STEWART: Perhaps, Your Honor, I'm
 2 just confused, but -- and let's put that transcript
 3 back up on the screen. Mr. Ciantra paraphrased
 4 parts of it, but the fact of the matter is there
 5 was no instruction in and his question got
 6 answered. And if we could blow up the bottom
 7 quadrant of our document there. And there's this
 8 colloquy between Mr. Miller and Mr. Ciantra and
 9 Mr. Miller makes an objection. And Mr. Ciantra.
 10 I'm not asking him that. And if so, I would ask
 11 you not to expound. So let me ask the question
 12 again. Let's make the record straight. Question,
 13 did the task force you were part of reach a
 14 consensus on the question of what effect the
 15 provision of the Michigan State constitution that
 16 protects accrued pension benefits would have on a
 17 Chapter 9 filing? He answered it. No. Question,
 18 there was no consensus? No. And if we went to the
 19 following page with a follow up question, there's
 20 no instructions either.

21 THE COURT: Let's do that. Can we go to
 22 the next page?

23 MR. STEWART: You'll have to blow those
 24 up, so we can all see them.

25 THE COURT: Is this the next page that we

1 have now?

2 MR. STEWART: Okay. So I can keep
3 reading, Judge, but as I go down this, I don't see
4 an instruction not to answer a question. I don't
5 see what was withheld. And then I can go further,
6 I have other reasons too, but this to me seems to
7 be the most important one. And perhaps I just
8 misunderstood it and we're in the wrong page and
9 why don't I sit down and Mr. Ciantra can stand up
10 and guide us to where maybe I should have looked.

11 THE COURT: Mr. Ciantra, this is an
12 important motion that you have made to strike?

13 MR. CIANTRA: Yes.

14 THE COURT: So I don't want to press you
15 for a response to my question so let's take our
16 time and you can research this properly and present
17 your best case to the Court as to maybe even more
18 than one example of situations in which you assert
19 that the privilege claim was selectively advanced.
20 So there's no need to rush through this.

21 MR. CIANTRA: Thank you, Your Honor. I
22 appreciate it. I will review the transcript and I
23 will respond.

24 THE COURT: Okay. All right. Does
25 anyone else have any questions for Mr. Moore? Yes,

1 that the City's analysis with respect to the
2 unfunded position on the pension had not been
3 completed?

4 A. I spoke with Mr. Orr regularly as to the status of
5 all analyses and what the sources of where numbers
6 were coming from.

7 Q. Okay. But I'm just asking specifically if you
8 remember telling Mr. Orr that the City's analysis
9 and its actuary's analysis of the unfunded position
10 had not been completed. Do you recall that?

11 A. I recall specifically telling him the source that
12 we were using for numbers as well as additional
13 activities that the pension task force would
14 undertake for other analysis.

15 Q. So that means that additional analysis was in
16 process, is that fair to say?

17 A. Yes, and to this day additional analysis is in
18 process.

19 Q. Do you recall telling Mr. Orr that the City was
20 trying to undertake a process to develop a more
21 concrete valuation model to analyze the amount of
22 the unfunded position?

23 A. I did tell Mr. Orr that the analyses that we were
24 giving him were based on Gabriel Roeder valuation
25 and that Milliman would be developing its own

1 sir.

2 MR. SHERWOOD: Your Honor, just on the
3 last point, before I -- this privilege was also
4 asserted at the deposition of Mr. Bowing (ph) from
5 Milliman.

6 THE COURT: Let's add that one to the
7 group that you'll put together together and we'll
8 deal with it in due course.

9 MR. SHERWOOD: Good afternoon, Mr. Moore.
10 Jack Sherwood on behalf of AFSCME.

11 THE WITNESS: Good afternoon,
12 Mr. Sherwood.

13 EXAMINATION

14 BY MR. SHERWOOD:

15 Q. Let me ask you about some of your conversations
16 with Mr. Orr about the underfunding of the position
17 of the pensions. Do you recall that testimony?

18 A. Yes, sir.

19 Q. Okay. And during those conversations between you
20 and Mr. Orr, did you advise him that the analysis
21 of the unfunded position had not yet been
22 completed?

23 A. Could you be more clear on which conversations?

24 Q. In any conversations that you had with Mr. Orr
25 before the bankruptcy was filed, did you advise him

1 valuation model as well.

2 Q. And did you also tell Mr. Orr that because the
3 analysis of the unfunded position was still in
4 process, that it was hard to negotiate with respect
5 to that number because there wasn't a common
6 assumption with respect to what the number should
7 be?

8 A. No, I never told Mr. Orr that it was hard to
9 negotiate.

10 Q. Did you tell him it was difficult to negotiate with
11 respect to a pension underfunding amount when that
12 amount was still in process of being developed?

13 A. No, I never told him that.

14 Q. Was that your belief in September of this year?

15 A. My belief in September of this year certainly was
16 not that it was difficult to have a discussion or a
17 negotiation over these numbers.

18 Q. Did you say it was premature -- would you say it
19 was premature to negotiate over the pension
20 underfunding if the -- if the number was not known?

21 A. No.

22 Q. So it's your view that you can negotiate with
23 respect to a pension under funding amount even
24 though you don't know exactly what that amount is?

25 A. Any pension under funding amount is an estimate and

1 we have an estimate, there are other estimates out
 2 there and certainly you can engage in discussions
 3 around those estimates.

4 **Q.** You testified earlier that the City of Detroit's
 5 individual taxes are the highest in Michigan,
 6 right?

7 **A.** Yes, sir.

8 **Q.** What about taxes on people or entities other than
 9 individuals?

10 **A.** There is a corporate tax rate as well, corporate
 11 income tax rate.

12 **Q.** Are they the highest in the State of Michigan?

13 **A.** I believe that's the case, yes.

14 **Q.** Have you investigated the operations of the tax
 15 people in Michigan?

16 **A.** Could you define tax people.

17 **Q.** The tax department.

18 **A.** Tax department of the State of Michigan?

19 **Q.** No, of the City of Detroit?

20 **A.** Which tax are you referring to?

21 **Q.** Any.

22 **A.** Yes, sir.

23 **Q.** And have you analyzed -- have you looked into
 24 rebates, tax rebates for corporations in the State
 25 of Michigan -- I'm sorry, in the City of Detroit?

1 you would have. You don't understand what
 2 authority means?

3 **A.** Mr. Sherwood, I certainly was authorized to go to
 4 those meetings, to present information and to
 5 receive information back, so yes, I was authorized.

6 **Q.** You were authorized to go to the meeting, to
 7 present information, and to receive information
 8 back, correct?

9 **A.** Yes, sir.

10 **Q.** And is it your testimony that that constitutes
 11 grounds to negotiate?

12 **A.** If you're --

13 **Q.** A party to negotiate. I'm sorry.

14 **A.** Yes, sir, my understanding not in the context of
 15 collective bargaining agreements, but in the
 16 context of negotiations where there's give and
 17 take, yes.

18 **Q.** Were you consulted by Mr. Orr in connection with
 19 the decision of the City to file Chapter 9?

20 **A.** No, I was not.

21 MR. SHERWOOD: I have nothing further.

22 Thank you.

23 THE COURT: Any other questions?

24 MR. KING: Good afternoon, Your Honor.

25 Ron King with Clark Hill. I'm a colleague of

1 **A.** Corporate taxes are only approximately \$6 million
 2 per year, so we have not spent a whole lot of time
 3 on corporate income taxes.

4 **Q.** And what about tax rebates, have you spent a lot of
 5 time on that?

6 **A.** No, sir.

7 **Q.** At the meeting on June 14th, you were present,
 8 correct?

9 **A.** Yes, sir.

10 **Q.** And then you testified about a meeting on
 11 June 20th, also, correct?

12 **A.** Yes.

13 **Q.** Were you present -- were you present at that
 14 meeting?

15 **A.** There were two meetings on the 20th, and yes, I was
 16 present for both.

17 **Q.** Was Mr. Orr at either of those meetings?

18 **A.** No.

19 **Q.** And at either of those meetings, did you have
 20 authority to negotiate with the parties at that
 21 meeting, at those meetings? Did you have authority
 22 to negotiate with the parties at those meetings on
 23 behalf of the City?

24 **A.** Could you define what you mean by authority.

25 **Q.** Just the general understanding of authority that

1 Ms. Green and Mr. Gordon's. Pleasure to be in
 2 front of you today.

3 EXAMINATION

4 BY MR. KING:

5 **Q.** Mr. Moore, I just have a handful of questions and
 6 I'll try to jump around a little bit just because I
 7 don't want to be cumulative?

8 **A.** Okay, Mr. King.

9 **Q.** As we sit here today, is it true that the City and
 10 its actuarial actuaries have not completed their
 11 analysis on the unfunded pension liabilities?

12 **A.** The City has completed its analysis from the
 13 standpoint of coming up with the 3.5 billion. The
 14 City desires to undertake additional analysis.

15 **Q.** So it's not completed, the analysis yet?

16 **A.** The City would like to continue to refine that
 17 estimate.

18 **Q.** So there's additional work that needs to be done
 19 before they'll complete their analysis?

20 **A.** Not that needs to be done, but that we would like
 21 to do.

22 **Q.** And so I understand your earlier testimony, to
 23 date, the City hasn't proposed any specific
 24 restructuring of the pension plans or a cut in
 25 pension benefits to any retiree; is that correct?

1 A. The City has proposed a process, a couple of times,
 2 with which to undertake, but there have not been
 3 specifics as to any cuts, if you will, in a
 4 pension.

5 Q. Now let me refer you back to Exhibit 43, if we
 6 could have that put back on the screen, please.
 7 And specifically page 101, please. And this is --
 8 now can we go next page, please.

9 Now I'm looking for the page related to
 10 the pension plans. 109. I'm sorry. Thank you.
 11 And referring you to provision that you testified
 12 on previously, related to the claims for the
 13 unfunded pension liabilities. Do you see that
 14 section?

15 A. Yes, sir.

16 Q. Outside of this presentation, have there been any
 17 other presentations or proposals presented to any
 18 of the objectors with respect to the treatment of
 19 the unfunded pension liabilities?

20 A. Yes, sir.

21 Q. And which ones are those?

22 A. The two meetings on June 20th, there were documents
 23 that were handed out that had specifics as it
 24 relates to pension in those documents.

25 Q. What specifically?

1 contemplated not impairing or diminishing pension
 2 benefits?

3 A. Yes, sir, the June 14th presentation, the financial
 4 projections, the baseline show what we anticipate
 5 the contributions would be without any cuts to
 6 pension plans.

7 Q. But that same June 14th proposal specifically
 8 states that there will be significant cuts in
 9 accrued vested pension amounts, correct?

10 A. It indicates that, yes.

11 MR. KING: I don't have any further
 12 questions.

13 THE COURT: Thank you, sir. Other
 14 questions for the witness?

15 MR. RUEGGER: A few, Your Honor.

16 Good afternoon, Mr. Moore. We met a
 17 month ago.

18 THE WITNESS: Yes, sir.

19 MR. RUEGGER: I just have a couple
 20 questions.

21 EXAMINATION

22 BY MR. RUEGGER:

23 Q. The first one relates to the June 20 meeting. You
 24 testified about that on direct. Do you remember?

25 A. Yes, sir.

1 A. There were some specific thoughts as to ideas for
 2 modifying benefits of the pensions.

3 Q. But again, no specific numbers in terms of no
 4 specific numbers that reflect a cut to a pension
 5 benefit?

6 A. There were a lot of numbers in the June 20th
 7 document regarding the pensions, yes.

8 Q. But my question is pretty simple. There wasn't a
 9 specific proposal that would say that the pension
 10 benefit of a particular retiree is going to be cut
 11 by X percent?

12 A. Correct.

13 Q. And was there ever an effort undertaken by you or
 14 the City to develop a plan or proposal that didn't
 15 contemplate an impairment or of accrued pension
 16 benefits?

17 A. Yes.

18 Q. And was that plan presented to any of the
 19 objectors?

20 A. Similar to what I indicated before, I don't believe
 21 there's anything specifically that has been
 22 presented in terms of pension benefits.

23 Q. So you're saying -- I should be clear.

24 Pre-petition, so prior to July 18th, was there ever
 25 a plan presented to any of the objectors that

1 Q. At that meeting, did you have authority to accept
 2 any counter proposals from any of the participants?

3 A. Except from the standpoint of receive and then
 4 bring it back to City officials, yes.

5 Q. So you could have informed Mr. Orr and the other
 6 City officials, but you couldn't have agreed to
 7 anything at that meeting that had been countered;
 8 is that correct?

9 A. I think it would be highly unlikely that anything
 10 like that would happen at that meeting.

11 Q. Just answer my question, though. You couldn't have
 12 agreed to anything that might have been proposed by
 13 any of the other participants, correct?

14 A. No, sir.

15 Q. Only a couple questions. Switching subjects.

16 On your conversations with Mr. Orr,
 17 related to the alleged underfunding figure, did any
 18 of those occur prior to the June 14th proposal that
 19 was just mentioned?

20 A. Yes, sir.

21 Q. Approximately how many?

22 A. This is a guess, but perhaps five to seven meetings
 23 or conversations.

24 Q. On that issue, before that meeting?

25 A. Yes, sir.

1 **Q.** And approximately how many conversations with
 2 Mr. Orr on that figure occurred between the
 3 June 14th proposal and the July 18th petition
 4 filing?
 5 **A.** I would guess maybe two.
 6 **Q.** Did your information relating to that figure change
 7 at all between the June 14th proposal and the
 8 July 18th filing?
 9 **A.** No, sir.

10 MR. RUEGGER: Thank you. No further
 11 questions.

12 Thank you, Your Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. STEWART: No, Your Honor.

15 THE COURT: You may step down. Thank you
 16 very much for coming today.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: I will have to really
 19 maintain your status as a witness here until we
 20 resolve the earlier issue that was raised about the
 21 privilege, so your sequestration still applies,
 22 okay, sir?

23 THE WITNESS: Understood. Thank you,
 24 Your Honor.

25 THE COURT: All right.

1 record, please?
 2 **A.** Kenneth Buckfire. I reside at 1175 Park Avenue,
 3 New York, New York.
 4 **Q.** And where are you from originally?
 5 **A.** Detroit, Michigan.
 6 **Q.** Born and raised?
 7 **A.** Born and raised in Detroit and suburbs, then went to
 8 the University of Michigan where I graduate in
 9 addition 1980, and then I went to New York.
 10 **Q.** Could you tell me something -- you're employed now?
 11 **A.** I am.
 12 **Q.** And where are you employed?
 13 **A.** I am the co founder and co president of Miller
 14 Buckfire and company an investment banking firm
 15 based in New York City.
 16 **Q.** And prior to that, what was your employment
 17 history?
 18 **A.** Prior to that, I began my career as a restructuring
 19 banker in 1987 with Dillon Read & Company, after
 20 several years with that firm, I joined Lehman
 21 Brothers, where I was a senior restructuring
 22 banker. In 1996, I joined Wasserstein Perella to
 23 help them found their financial restructuring
 24 practice, which my partner Henry Miller and I then
 25 bought in 2002 to form Miller Buckfire.

1 MR. CULLEN: Good afternoon, Your Honor.
 2 My name is Thomas Cullen of Jones Day, and I'm
 3 going to be presenting the next witness, Ken
 4 Buckfire.

5 THE COURT: What is your last name, sir?

6 MR. CULLEN: Cullen, C-U-L-L-E-N.

7 Sorry, Your Honor. He was in the men's
 8 room.

9 THE COURT: While we're waiting,
 10 Ms. Patek, may I have your attention, please?

11 MS. PATEK: Sure.

12 THE COURT: Do you have one or two extra
 13 copies of your exhibits or your exhibit book that
 14 we can have for my law clerk or law clerks? We'll
 15 start with your offer of one if we can have yet one
 16 more at a later time, that would be great. Okay?

17 MS. PATEK: No problem.

18 THE COURT: Thank you so much.

19 (Witness sworn.)

20 THE COURT: Please sit down.

21 MR. CULLEN: Good afternoon,

22 Mr. Buckfire.

23 EXAMINATION

24 BY MR. CULLEN:

25 **Q.** Could you state your full name and address for the

1 **Q.** And what does it mean -- explain exactly what
 2 Miller Buckfire does. Miller Buckfire is an
 3 investment bank specializing in restructuring
 4 advisory services to governments and companies.
 5 Our mission is to work with those entities when
 6 they have financial difficulties, either paying
 7 their debts when due or need specific skills in
 8 negotiating with their creditors and other
 9 stakeholders.
 10 **Q.** Unpack that for me a little bit, if you would,
 11 Mr. Buckfire. Restructure advisory services. What
 12 does that mean?
 13 **A.** Our typical engagement is with a company or
 14 government which is experiencing financial
 15 difficulty and does not quite know what to do about
 16 it. So our first mission would be to help them
 17 with diagnosis, to identify the causes of their
 18 financial pressures, to identify what can be done
 19 about those, in terms of a diagnostic, and then
 20 make recommendations on how to solve the problem,
 21 which normally means for a company making sure they
 22 have adequate liquidity to operate in the ordinary
 23 course and maximize values for their stakeholders
 24 in the case of the government, making sure they
 25 have adequate access to capital markets and the

1 ability to provide an adequate level of services.
 2 **Q.** And in these engagements, what is your personal
 3 role?
 4 **A.** My personal role is to manage our team of bankers
 5 in working with our clients to do our diagnosis and
 6 then once instructed by the client as to what they
 7 wish us to do, help them formulate strategy and
 8 then execute whatever transactions are required to
 9 implement that strategy. My job is general
 10 financial strategy and oversight.

11 **Q.** And could you give the Court some idea of specific
 12 engagements you've worked on, which were public?

13 **A.** Well, over the years, we've worked on many well
 14 known and complex restructurings, some of the more
 15 notable ones would include Niagra Mohawk Power
 16 Corporation, Calpine Corporation, General Growth
 17 Properties, Kmart Corporation, Lear, Dana. We've
 18 also been involved in several well known municipal
 19 restructurings, including Stockton, California, and
 20 we are currently advising a large sovereign country
 21 with its financial issues.

22 **Q.** How did you first become familiar with Detroit's
 23 financial and operational issues?

24 **A.** Well, being from here, I have always paid close
 25 attention to what's been going on in Detroit.

1 March or April of 2012 for a 60 day review. They
 2 wanted us to review the public information of the
 3 City to try to ascertain what their financial
 4 challenges were and to put that in a format that
 5 could be useful for decision makers to understand
 6 the situation more accurately. That put us in
 7 contact with members of the mayor's administration,
 8 Jack Martin and Chris Andrews in particular, so I
 9 began a relationship with them.

10 **Q.** Did there come a time in the fall of 2012 when the
 11 City issued a request for proposal for certain
 12 financial services?

13 **A.** Yes.

14 **Q.** Could you describe that for me please?

15 **A.** Well, the City had entered into a consent decree
 16 with the state in March of 2012, pursuant to which
 17 the state promised to provide financing to the City
 18 in support their restructuring efforts as long as
 19 the City was meeting certain milestones that were
 20 incorporated in that agreement.

21 I wasn't paying that much attention at the
 22 time, but then in the fall, Jack Martin called me
 23 and said you know, we're probably going to have to
 24 put out a request for financial advisor because
 25 we're about to enter into a new agreement with the

1 Certainly in 2009 and the financial crisis when it
 2 became well known that Detroit had lost access to
 3 the capital markets due to its down grade, I
 4 started paying more attention to the problems here,
 5 trying to figure out if there's some way that my
 6 firm could be helpful and obviously give my
 7 personal connection to the area, it was a personal
 8 interest to me to try to find a way to contribute
 9 to the revitalization of the City.

10 **Q.** And so what did you do?

11 **A.** We paid close attention to it, we tried to figure
 12 out whether there was away to form some
 13 relationships locally that might eventually
 14 introduce us to Mayor Bing and to other people in
 15 the administration who might find our particular
 16 expertise of help and that just began a general
 17 program of building those relationships.

18 **Q.** How did you first become engaged by the City?

19 **A.** We had done a very brief financial review of the
 20 City on behalf of the state in March or April of
 21 2012. It was a 60 day process of just looking at
 22 the public information, trying to identify what the
 23 financial --

24 **Q.** If you could slow down and speak up a little?

25 **A.** All right. We first were engaged by the state in

1 state and they're going to require us to hire
 2 advisors to help implement the restructuring
 3 program that we first had described in the
 4 March 2012 consent agreement.

5 So we were invited to submit our
 6 qualifications to the City at that time.

7 **Q.** Now did you become familiar in the course of your
 8 work with the consent agreement?

9 **A.** Yes, I did.

10 **Q.** And does the term milestone agreement mean anything
 11 to you?

12 **A.** Yes.

13 **Q.** Let me show you Exhibit 23. In the book beside
 14 you, there's a book Exhibit 6 through 50 and we'll
 15 throw it up on the screen as well. And it will be
 16 on the screen in front of you. Do you see it, sir?

17 **A.** I do.

18 **Q.** Is that the consent agreement to which you
 19 referred?

20 **A.** Yes.

21 **Q.** What understanding did you derive of the concept
 22 and purpose of this consent agreement?

23 **A.** Well, the consent agreement as I reviewed it
 24 describes a transaction really between the state
 25 and the City in which the state agreed to help the

1 City raise funding to support its liquidity while
 2 it began a reform program, which was very clearly
 3 delineated in I think section 2.4 and more fully
 4 described in annex B of this agreement.

5 **Q.** Could I direct your attention to, I believe it's
 6 section -- well, let's look at 2.4 and 2.5. Do you
 7 see that, sir?

8 **A.** I do.

9 **Q.** Is that the reform program and the quid pro quo, if
 10 you will, by the treasury?

11 **A.** Yes.

12 **Q.** And why did the state want the reform agreement in
 13 your understanding?

14 **A.** Well, the City as I understood it had asked for
 15 financial assistance from the state. The City was
 16 under liquidity stress, they didn't have sufficient
 17 cash and they needed to find cash somewhere and the
 18 state agreed to facilitate the City's sale of
 19 bonds, a portion of which would be given to the
 20 City and in consideration for that assistance, my
 21 understanding is the City agreed to implement the
 22 reform program.

23 THE COURT: Excuse me one second. It
 24 turns out you are now too close to the microphone
 25 and as a result our over flow rooms are getting

1 **A.** Yes.

2 **Q.** If I could direct your attention to Exhibit B of
 3 Exhibit 23, Annex B. I'm sorry. What's this, sir?

4 **A.** Well, this was the reform program goals and
 5 subjects that had been agreed to by the City with
 6 the state.

7 **Q.** Just looking up at the top there, first is
 8 something prioritization and timing to be mutually
 9 agreed upon by mayor and council and approved by
 10 financial advisory board as provided in the
 11 agreement. What was your understanding of what the
 12 financial advisory board was and what its role was?

13 **A.** Well, the financial advisory board my understanding
 14 was created to make sure that the City had
 15 appropriate level of oversight in terms of
 16 developing accurate financial information,
 17 reporting it to the stakeholders and then making
 18 sure that the once the operation of the program had
 19 been designed that it would be approved by the
 20 financial advisory board as consistent with the
 21 goals of the agreement.

22 **Q.** Did this strike you as a fairly comprehensive set
 23 of reform initiatives?

24 **A.** Yes.

25 **Q.** If I could direct your attention to Exhibit 7. Is

1 static, so move it just a bit further away?

2 THE WITNESS: Is that better, Your Honor.

3 THE COURT: Yes.

4 MR. CULLEN: We should have a training
 5 program, Your Honor.

6 THE COURT: No. Or a better audio
 7 system.

8 BY MR. CULLEN:

9 **Q.** In terms of the division of responsibility between
 10 the state and the City reflected in this agreement,
 11 did you have an understanding of that?

12 **A.** I did.

13 **Q.** Could you tell me what that understanding was?

14 **A.** Well, my understanding was that the responsibility
 15 for designing and implementing the reform program
 16 was really entirely the City's. The state agreed
 17 to provide the funding the City required to sustain
 18 its operations while doing the formulation of the
 19 plan and executing it and that the state also asked
 20 for a reasonable amount of oversight to make sure
 21 that the City in fact did what they said they were
 22 going to do.

23 **Q.** Was the state -- would it be fair to say therefore
 24 that the state was conditional on progress on that
 25 reform program?

1 this the agreement we referred to as the milestone
 2 agreement?

3 **A.** Yes.

4 **Q.** What was your understanding of the concept and
 5 purpose of this agreement?

6 **A.** Well, my understanding was that by November of last
 7 year, the City had not been able to achieve many of
 8 the milestones or requirements of the original
 9 consent agreement and this was entered into between
 10 the state and the City as a condition of further
 11 disbursements of funds from the escrow account that
 12 had been established by the state on behalf of the
 13 City in March of 2012.

14 **Q.** And if you look at the bottom of the first page,
 15 and going on to the top of the next, where it says
 16 joint restructuring expenses and restructuring
 17 assistance. And -- I'm closer, I will read it.
 18 The City will as expeditiously as possible select
 19 and retain a restructuring firm or teams to advise
 20 the City's program management office upon and
 21 implement the City's reform program including but
 22 not limited to -- next page as well. Can you blow
 23 that up the top of that? -- and was it your
 24 understanding -- let me ask an open ended way.
 25 What impacted this milestone agreement

1 have on your hiring?

2 **A.** Well, this is what led to our retention. We had

3 stayed in touch with Chris Andrews, who was the

4 program management director and Jack Martin, who

5 was the CFO all during this period even though we

6 had no role and they had called me in November

7 after this was signed and said we decided we really

8 need expert outside help to implement our reform

9 program and look forward to getting an RFP.

10 **Q.** Now was there any borrowing in connection with the

11 milestone agreement?

12 **A.** Well, the original consent agreement had

13 contemplated a financing I believe was \$130 million

14 of which I believe it was 50 or 60 million was

15 released to the City upon that funding and the rest

16 was retained in an escrow account, which was still

17 in effect as of the date of this agreement.

18 **Q.** And so was there some relation between progress on

19 the agreement and draws from the escrow account?

20 **A.** Yes, the state was requiring the City to execute

21 its milestones in order for further cash to be

22 released to it pursuant to this agreement.

23 **Q.** At what point were you actually hired by the City

24 in 12?

25 **A.** Well, as I recall, we submitted to the RFP process

1 March agreement, and that's why this milestone

2 agreement goes into such specificity about what is

3 now required of the City to do in order for the

4 state to continue to release money from the escrow

5 account.

6 **Q.** But let's -- let me be clear or let me allow you to

7 be clear. Did the division of responsibility or

8 authority for these reforms remain the same under

9 the milestone agreement or was it changed?

10 **A.** No, it was still with the City.

11 **Q.** And ultimately, as of the date that the emergency

12 financial manager was named, had the City made

13 substantial progress on this reform program?

14 **A.** No.

15 **Q.** And why do you say that?

16 **A.** Because they hadn't. I mean, they simply had

17 failed to address any of the major items first

18 identified in March of 2012, in particular no

19 blight removal, restoration of public safety, there

20 had been no initiatives made no, money spent,

21 simply nothing had happened.

22 **Q.** Let me direct your attention to Exhibit 7 at Roman

23 two, eight, C. It says any future draws to be

24 negotiated between the administration and the state

25 are contingent on the following, provided that the

1 in -- might have been late November. We were told

2 we had won in December and we signed our agreement

3 with the City I believe on January the fifth of

4 2013.

5 **Q.** When you first came into your responsibilities as

6 the restructuring firm for the City, did you

7 undertake an assessment of the city's finances and

8 operations?

9 **A.** Yes, we did, and we already were familiar with that

10 because of the review we had done seven months

11 before for the state.

12 **Q.** All right. Now in terms of the consent agreement

13 and the milestone agreement, did you come to an

14 understanding of the degree to which those

15 agreements had been a success in promoting or

16 helping the City to achieve the identified reforms?

17 **A.** Yes.

18 **Q.** What was that view?

19 **A.** That it had been a very mixed outcome. The City

20 had been successful in delivering really for the

21 first time good financial information on a monthly

22 basis to the FAB, which had been a responsibility

23 required of it as part of the original consent

24 agreement, but they had very, very limited success

25 in implementing any of the other objectives of that

1 escrow account will maintain a minimum balance of

2 \$50 million at all times. First, what was the

3 escrow account?

4 **A.** Well, the escrow account had been created with some

5 of the proceeds from the \$130 million bond offering

6 that had been done in the late -- early spring of

7 2012.

8 **THE COURT:** Speak up again, please.

9 **THE WITNESS:** I'm sorry. Of the

10 \$130 million bond offering that had been done a

11 year prior, that was the money that had been put

12 into escrow by the state on behalf of the City.

13 **BY MR. CULLEN:**

14 **Q.** And what was the significant -- did you attain an

15 understanding of the significance of the minimum

16 balance of \$50 million its importance?

17 **A.** Well, the City has an aggregate a billion dollars

18 plus budget, has nearly 10,000 employees, and

19 \$50 million represents approximately three weeks of

20 expenditure on the part of the City and that's

21 relevant because the City's revenues come in a

22 fairly lumpy way for a variety of different

23 sources, so to make sure they have adequate

24 liquidity to meet their obligations, particularly

25 payroll, the state felt it appropriate to make sure

1 there was always \$50 million in reserve. If it
 2 turned out the City had miss estimated its cash
 3 reserves, the state could step in and help.

4 **Q.** Pardon me?

5 **A.** The state could step in and release this money in
 6 an emergency.

7 **Q.** All right. You say the revenues came in in a lumpy
 8 way. What does that mean?

9 **A.** Well, the City -- the City relies on four primary
 10 streams of revenue, gaming tax revenue, state
 11 revenue share, property tax, and income tax.
 12 Property tax income in particular comes in on a
 13 quarterly basis because that's when assessments are
 14 made, income taxes come in likewise in a fairly
 15 irregular fashion. The only revenue that is
 16 predictable and coherent is gaming revenue because
 17 it is being collected by the casinos on behalf of
 18 the City and readmitted to the City pursuant to a
 19 fairly complex set of accounts on a monthly basis.

20 **Q.** And so there will be times when the City is more
 21 flush than others?

22 **A.** Correct.

23 **Q.** Or more importantly, less flush.

24 MR. MONTGOMERY: Objection, Your Honor.
 25 I believe that's a leading question that is not

1 really believe, A, we can execute it, and B, it's
 2 actually needed.

3 **Q.** So upon your appointment, what did you first do to
 4 get your arms around the problem?

5 **A.** Well, the first thing we did was refresh our
 6 understanding of the City's financial condition and
 7 having worked with Jack and Chris nine months
 8 earlier, we had a very strong understanding of
 9 their condition. We wanted to revisit that, which
 10 we did. We then sat down with the other advisors
 11 to the City at that time, Ernst & Young, and Conway
 12 MacKenzie and reviewed together the City's reform
 13 program and quickly agreed on a number of different
 14 projects that had to be done collectively so we
 15 could form a coherent understanding of the City's
 16 short term and long-term financial condition.

17 **Q.** From that point forward, what was the working
 18 relationship between you and the other advisors
 19 Ernst & Young and Conway MacKenzie?

20 **A.** Very collaborative and close. We were on the phone
 21 with them probably on a daily basis, either myself
 22 or my team, because it's a very integrated advisory
 23 challenge. We as the financial strategists can't
 24 do our job unless we have good information from the
 25 City which has to focus on two primary areas. One,

1 necessary.

2 THE COURT: The objection is sustained.

3 BY MR. CULLEN:

4 **Q.** What were the terms of your engagement for the City
 5 at that time? What were you asked to do, what did
 6 you set out to do?

7 **A.** We agreed to provide general financial advisory
 8 services. There were no transactions contemplated
 9 or built into our engagement. We were providing
 10 corporate financial advice only for \$150,000 a
 11 month.

12 **Q.** When you distinguish between general financial
 13 service and no transactional fees built in, what
 14 difference does that make to an engagement for a
 15 firm such as yours?

16 **A.** Well, when we begin an engagement for a government
 17 or a company and we don't know what we might have
 18 to do, we normally agree to provide general
 19 financial advice just diagnosis, set of
 20 recommendations with no presumption that we are
 21 going to be hired to do any transactions as a
 22 result of that because not only does it protect the
 23 client from knowing that our advice is in any way
 24 bias, it protects our firm because we don't want to
 25 agree to provide a transaction service unless we

1 the short term liquidity position of the City. We
 2 have to make sure that at all times the City can
 3 operate in the ordinary course because it is
 4 pointless to try to address the long-term issues
 5 unless you have the cash to give you the time to do
 6 so. That was a primary responsibility of Ernst &
 7 Young.

8 Secondly, and also related again to the
 9 March 2012 agreement, we needed to understand
 10 exactly the costs and timing of implementing the
 11 reform program. There had been no budget created
 12 by the City during that period of time to address
 13 any of the issues in Annex B, and therefore, in
 14 order to form a long-term financial strategy for
 15 the City, we needed to know how much capital we
 16 would need to raise from whatever source for the
 17 City to implement that program. And that was
 18 Conway MacKenzie's primary responsibility.

19 **Q.** Were you the -- were you personally the leader of
 20 this integrated team of restructuring
 21 professionals?

22 **A.** Yes.

23 **Q.** All right. And you said before that this is a
 24 complex task and you needs specialized help. Did
 25 you come to a conclusion in the respective fields

1 as to whether you had the right help in E and Y and
2 Conway MacKenzie?

3 **A.** From a financial perspective, I thought we had an
4 excellent team that could adequately address all
5 the financial and operational issues of the City.

6 **Q.** And as you went forward to make judgments and to
7 give strategic advice to the City, were you relying
8 on the advice and the work of Conway MacKenzie and
9 E and Y?

10 **A.** Yes.

11 **Q.** In terms of analyzing the finances of the City at
12 that time, what preliminary conclusions did you
13 draw?

14 **A.** Well, we were very concerned about the City's
15 ability to operate in the ordinary course for a
16 number of reasons. The first one, which I was
17 aware of because of my earlier work for the City,
18 was the default to the swap counter parties. The
19 City in 2009 had entered into agreement with the
20 swap providers that were giving interest rate swap
21 protection to the certificate of participation
22 bonds that had gone against the City, that is, the
23 present value of those swap contracts was a
24 significant cost to the City, not a benefit.

25 In 2009, because of a default at that

1 budget. And that was an immediate issue that we
2 addressed and we had to deal with in order to
3 preserve the City's ability to operate while we're
4 trying to figure out what the long term strategy
5 should be.

6 BY MR. CULLEN:

7 **Q.** Now did you go about -- did you do anything to
8 evaluate the assets of the City?

9 **A.** We did. Together with the City and again, we had a
10 lot of familiarity with the City because of our
11 earlier work.

12 **Q.** I'm just talking about in this initial phase when
13 you're first getting yourself oriented.

14 **A.** We had begun to do what we always do is to address
15 the City's assets and liabilities to understand
16 what value did we have to work with to settle with
17 the City's creditors and perhaps monetize to create
18 a incremental liquidity for the City to operate, so
19 we began to examine all the City's assets to
20 determine whether any of them were, in our words,
21 non-core, not essential for City operations, and
22 could be available for sale and if they were
23 available for sale, how much could be realized.

24 **Q.** Okay. Did you at that point evaluate the time
25 necessary to effectuate a sale and turn an asset

1 time, the City settled that default by granting a
2 collateral interest in the gaming revenues to UBS
3 and Bank of America, Merrill Lynch. However,
4 because of another credit down grade in March of
5 2012, the City was again in default to those banks.
6 I was.

7 MS. GREEN: Objection. To the extent he
8 is testifying to the legal conclusion of what was.

9 THE COURT: Speak into the Mike.

10 MS. GREEN: I object to the extent that
11 he's testifying to a legal conclusion of what
12 constitutes an event of default under the swap
13 contracts.

14 THE COURT: I don't understand him to be
15 testifying to that, so the objection is overruled.

16 MS. GREEN: Thank you, Your Honor.

17 THE COURT: You may continue, sir.

18 THE WITNESS: Thank you. I was very
19 concerned about this uncured default and the threat
20 that at any moment the swap counter parties could
21 exercise their remedies and block the City's access
22 to its gaming revenues, which was and still is the
23 highest quality source of revenue the City has.
24 Approximately \$180 million a year. Which
25 represents close to 20 percent of its annual

1 into cash?

2 **A.** Yes.

3 **Q.** Now at the time you came into your responsibilities
4 as head of this restructuring effort for the City
5 of Detroit, was there talk about the possibility of
6 Chapter 9?

7 **A.** Yes.

8 **Q.** Could you describe that for me?

9 **A.** Well, when a company or government is in default,
10 the threat of bankruptcy is always real. The
11 lack of cash is normally what would push a company
12 into a Chapter 11, in the case of a government,
13 it's more complex, but clearly we had to be
14 concerned about that being in the necessary way of
15 protecting the City given this unsecured default of
16 the swap banks and in January of this year, that
17 was our primary concern.

18 **Q.** What was your primary concerns?

19 **A.** That the swap banks could take unilateral action to
20 deprive of us access to the gaming revenues and
21 that would cause the City incredible damage because
22 we would immediately have to make massive cut backs
23 to services and we weren't sure what we would do
24 about it, so we had to consider Chinas an
25 alternative to protect the City.

1 **Q.** As a result of your initial review of the City's
2 position, what was your first set of advice to the
3 City about what more they should do or what more
4 you should do?

5 **A.** Well, in addition to accelerating our analysis of
6 the City's financial condition, which we obviously
7 had undertaken to do, we recommended the City
8 consider bringing in a law firm with the multi-
9 disciplinary skills and experience to help the City
10 with contingency planning for whatever might occur.

11 **Q.** And did you give specific instructions to either
12 E&Y or Conway MacKenzie in terms of what they
13 should try to accomplish in the short term?

14 **A.** I did.

15 **Q.** Let's start with E and Y?

16 **A.** With E and Y, I suggested to them even no their RFP
17 had only required testimony to do a five-year
18 forecast that really we should extend that to ten
19 years. For a City or government to look at a long
20 term financial picture, the longer you can look
21 out, the safer you are in terms of understanding
22 what you need to do. Five years is simply too
23 short a period for any realistic appraisal of its
24 performance. And they agreed to extend out their
25 analysis to ten years even though that did impose a

1 tax collections.

2 **Q.** And did you feel that you had a competent team in
3 E&Y to do this?

4 **A.** Yes.

5 **Q.** Did you tell them what you were going to use it
6 for?

7 **A.** Yes.

8 **Q.** Did you intend to rely on it?

9 **A.** I did.

10 **Q.** And did you rely on it?

11 **A.** I did.

12 **Q.** And do you as you sit here now feel justified in
13 your reliance upon it?

14 **A.** Yes.

15 **Q.** Did there come a time when Detroit turned its
16 attention to hiring legal counsel?

17 **A.** Yes.

18 **Q.** What was your involvement in that process?

19 **A.** Well, about a week after we had been officially
20 retained, I met with the City and we concluded that
21 at a minimum, the City needed to focus on
22 strategies, particularly legal strategies to
23 protect itself from the swap banks in terms of any
24 actions they might take to take the gaming revenues
25 away. It was their conclusion that bringing

1 significantly higher burden on them and we also
2 recommended to both Conway and E&Y that we elective
3 tow try to form our conclusions about the financial
4 condition of the City as soon as possible given its
5 continued financial stress and the uncured nature
6 of this default. We needed to move as fast as we
7 could to figure out what the true picture of
8 Detroit's condition was.

9 **Q.** And to get a ten-year picture of Detroit's
10 condition, what options were available to you at
11 that time in terms of resources, in addition to or
12 besides E&Y?

13 **A.** Well, we had access to the City, of course, and
14 they were very cooperative in giving us information
15 about their cost structure in particular, but there
16 really were no good predictions of revenues. We
17 had to go and do the best we could with information
18 that was available to us. In particular, it turned
19 out fortuitously, Ernst & Young has a group in
20 Washington which is probably the country's leading
21 experts in revenue policy and tax analysis for
22 municipalities and states, so we were able to avail
23 ourselves of that resource as well in terms of
24 developing a revenue forecast for the City,
25 particularly with respect to property and income

1 another law firm at least considering bringing in
2 another law firm in to supplement other attorneys
3 already working for the City was a sensible thing
4 to consider. They asked me to recommend the firms
5 that might meet the qualifications required, so we
6 basically gave them a list of law firms that we
7 felt had all the qualifications to provide it to
8 the full range of services the City might require
9 under any scenario.

10 **Q.** And how many law firms were there?

11 **A.** Well, I think we ended up with about 14 or 15 law
12 firms. Many of them were well known to the City
13 having done work for them before. The rest were
14 so-called national law firms that had had very
15 little exposure to the City but did have the
16 experience in complex reorganizations, has had some
17 experience with the Chapter 9s, had a lot of
18 experience out of Court restructurings, and in
19 addition to that had sufficient familiarity with
20 healthcare regulation and pension reform to deal
21 with those issues as well.

22 **Q.** (By Mr. Cullen): Was there a meeting at which
23 these law firms presented themselves?

24 **A.** Yes.

25 **Q.** Were you at that meeting?

1 A. I was.
 2 Q. Who else was at that meeting?
 3 A. Well, we had a large group from both the state and
 4 the City represented there for the purpose of
 5 interviewing the law firms they did not know. As I
 6 testified earlier, the City already knew quite a
 7 few law firms especially in Detroit that it was
 8 quite comfortable with, they did not feel they
 9 needed to interview those firms again, so they
 10 interviewed the firms they did not know, and I was
 11 present at that meeting with Andrew Dillon state
 12 Treasurer, Tom sacks ton who I believe is titled
 13 the senior deputy treasurer, Brom Stibitz, which
 14 S-T-I-B-I-T-Z, who was a senior advisor to the
 15 Treasurer, and Richard Baird who my understanding
 16 at the time he was the Governor's aide for human
 17 resources and things like that. And from the City,
 18 we had Chris Andrews, program management director,
 19 Jack Martin, CFO, and I believe we had somebody
 20 from the legal department but I can't recall their
 21 name.

22 A. I apologize, we had two members also from the
 23 financial advisory board, Sandy Pierce and Ken
 24 Wibble.

25 Q. In your understanding, who was to make the

1 suggesting the Emergency Manager?
 2 A. No.
 3 THE COURT: All right. Sir, let's pause
 4 now for our afternoon recess. It's 3:30. We'll
 5 resume at 3:45, please.
 6 COURT CLERK: All rise. Court is in
 7 recess.
 8 (Whereupon a break was taken
 9 from 3:29 p.m. ing,,
 10 COURT CLERK: Court is in session.
 11 Please be seated?
 12 THE COURT: It appears everyone is
 13 present. You may proceed.
 14 MR. CULLEN: Thank you.
 15 BY MR. CULLEN:
 16 Q. Mr. Buckfire, as Ernst & Young worked on these cash
 17 projections, did they keep you informed of their
 18 progress?
 19 A. Yes, they did.
 20 Q. Was there any particular run of these projections
 21 that stand out in your mind as having significance
 22 to this matter?
 23 A. Yes. In early May of this year, they showed me a
 24 draft 12-month cash flow forecast.
 25 Q. And what is it that cash flow forecast indicate to

1 decision?
 2 A. The City.
 3 Q. And what was your input into this decision?
 4 A. After the interviews were over, the City asked us
 5 to put together kind of a comparison sheet laying
 6 out the qualifications of all the law firms that
 7 had been interviewed and giving them, for lack of a
 8 better word, a qualitative assessment of their
 9 relative strengths and weaknesses, which we did
 10 provide.

11 Q. And was there another meeting after that at which
 12 the actual selection was made?

13 A. The initial presentations were on a Friday, I
 14 believe it was January 29th, and then the selection
 15 meeting was the following Friday.

16 Q. Were you at that meeting?
 17 A. No, my plane was stuck on the ground at LaGuardia,
 18 and even though I had been invited, I didn't
 19 attend.

20 Q. And do you know who was at that meeting?

21 A. I believe it was largely the same group that had
 22 done the interviews.

23 Q. And were you informed of the result?

24 A. I was told that the City had selected Jones Day.
 25 Q. All right. Did you have any role in selecting or

1 you?
 2 A. Well, it indicated to me that the City's cash
 3 position was far worse than I had ever feared. The
 4 City would effectively be operating with no cash by
 5 the end of that period of time, even on their
 6 current projections, which incorporated certain
 7 deferrals of expenses that in the ordinary course
 8 they should not be making. Now I was very alarmed
 9 by this because I was acutely aware of the fact we
 10 still had no solution to the default under the swap
 11 agreements and that at any moment the City's
 12 ability to provide services could be eliminated.
 13 Q. How would you describe the City's cash situation at
 14 that time as presented in those projections?
 15 A. The City had minimal cash, they had a few tense of
 16 millions of dollars, it was erratic, they had no
 17 real ability to project because as I testified
 18 earlier, cash would come in in a somewhat lumpy and
 19 unpredictable manner, and so at any given time, the
 20 City could find itself with no cash.
 21 Q. Broader group those cash flow projections
 22 memorialized in any of the documents in this case?
 23 A. Yes.
 24 Q. If I could show you Exhibit 75, at page 40. If you
 25 can blow up the numbers there, please. Are these

1 the numbers that you just testified to?
 2 **A.** Yes, they are.
 3 **Q.** Could you tell us what your understanding was at
 4 the time based upon these numbers?
 5 MR. SHERWOOD: Your Honor, I object to
 6 this witness' testifying about forecasted receipts
 7 for the period set forth there. That -- the proper
 8 subject for expert testimony and this is a lay
 9 witness.
 10 MR. CULLEN: May I lay some foundational
 11 questions, Your Honor?
 12 THE COURT: Okay.
 13 BY MR. CULLEN:
 14 **Q.** In your work as a restructuring analyst, do you
 15 normally commission cash flow forecasts?
 16 **A.** Routinely.
 17 **Q.** Is it one of the ordinary tools of your trade?
 18 **A.** Yes.
 19 **Q.** Do you make decisions based on those cash flow
 20 forecasts?
 21 **A.** I make recommendations based on these forecasts,
 22 yes.
 23 **Q.** And when you make those forecasts, what kind of
 24 people do you use to do them?
 25 **A.** We use -- we rely upon outside professionals, such

1 evidence is specifically designed so that when a
 2 party offers testimony requiring expertise,
 3 knowledge, tools of the trade, the trade of this
 4 witness is not a simple trade. It requires
 5 expertise, experience and so forth. And just
 6 because he relied on these and he does, it does not
 7 take this outside of the scope of rule 702 and
 8 frankly I just think this is sort of an end run
 9 around the Court's decision to deny the testimony
 10 or not give weight to the testimony with respect to
 11 the projections of Ernst & Young.
 12 MR. MONTGOMERY: Your Honor, could I
 13 joint for a moment if I might? May I join in
 14 objection?
 15 THE COURT: Of course you may. I'm not
 16 sure why you think you need to do that, but okay.
 17 MR. MONTGOMERY: I just wanted to point
 18 out one --
 19 THE COURT: There's an additional
 20 argument you want to make? Okay.
 21 MR. MONTGOMERY: Your Honor, very simply,
 22 to the extent that the City was going to try to
 23 rely on an officer, director or owner type
 24 exception, obviously this witness does not fall
 25 within that category.

1 as Ernst & Young and Conway MacKenzie as well as
 2 the finance staff of our client.
 3 **Q.** In this situation, did you think that a cash flow
 4 forecast of this type was necessary for the City to
 5 have?
 6 **A.** Yes.
 7 **Q.** Was it necessary for you to make informed
 8 recommendations?
 9 **A.** Yes.
 10 **Q.** And based upon these forecasts, did you indeed make
 11 recommendations to the City about its strategy in
 12 the restructuring?
 13 **A.** I did.
 14 **Q.** And did you have any other -- any better options
 15 available to you at that time to make this kind of
 16 a cash flow forecast which you said was necessary
 17 to your job on behalf of the City?
 18 **A.** No.
 19 MR. CULLEN: I would move the admission
 20 of this cash flow forecast, Your Honor.
 21 THE COURT: What's the exhibit number?
 22 MR. CULLEN: The exhibit number is 75,
 23 page 40. It's the financial operating plan, page
 24 40 of same.
 25 MR. SHERWOOD: Your Honor, rule 702 of

1 THE COURT: Yeah, I don't hear that quite
 2 at issue here, but thank you.
 3 Just so the record is clear and I'm
 4 clear, too, this was prepared by Ernst & Young?
 5 THE WITNESS: That's correct.
 6 MR. CULLEN: Your Honor, if I might?
 7 THE COURT: And it's not otherwise in
 8 evidence at this point?
 9 MR. CULLEN: It is otherwise in evidence.
 10 The Exhibit 75 as a whole is in evidence, subject
 11 to the fight about these parts of the exhibit and
 12 what they're in for and what they're not in for.
 13 THE COURT: I will admit the document but
 14 for the limited purpose of establishing what this
 15 witness relied upon for his work and not for
 16 purposes of establishing the truth of anything in
 17 it.
 18 MR. CULLEN: I take it, Your Honor, just
 19 to be clear, that when we close up this matter,
 20 depending on how you rule on the motions tomorrow,
 21 that it is some evidence, weight or not, of the
 22 state of the City that Mr. Buckfire will testify
 23 that he believed this was the state of the City,
 24 Mr. Orr will testify that he believed this was the
 25 state of the City, and that they had a reasonable

1 basis so to believe. The reasonableness of their
2 reliance on these numbers is a separate issue
3 from --

4 THE COURT: It might go to good faith,
5 but on the substance of the issue for example of
6 these projections, it's not evidence of that.

7 MR. CULLEN: All right, Your Honor.

8 THE COURT: I don't know how more clear
9 to be.

10 BY MR. CULLEN:

11 Q. What conclusions did you --

12 THE COURT: I will comment I have
13 refrained to make this comment until now but I will
14 make it now that you have asked the question. It's
15 actually hard for me to comprehend why you didn't
16 offer the Ernst & Young witnesses who prepared
17 these projections as experts. You may proceed.

18 MR. CULLEN: Thank you, Your Honor.

19 BY MR. CULLEN:

20 Q. What impact did these numbers have upon your
21 forward planning and advice with respect to the
22 Detroit restructuring?

23 A. Well, we were extremely alarmed by these numbers.
24 Remember, we received these numbers in early May.
25 We knew how unpredictable the City's ability to

1 payment, that would be another default to the swap
2 counter parties. At that point, we already had two
3 defaults to them. The original ratings down grade
4 of March of 2012, which had not been cured, and
5 indeed the appointment of Kevyn Orr as Emergency
6 Manager also in and of itself constituted a event
7 to default. The swap banks which were continuing
8 to get paid had not shown any indication they might
9 change their minds, nonetheless, it was a
10 significant risk to the City. So we immediately
11 turned our attention in early May to deciding what
12 should we do about this in order to make sure the
13 City continued to have adequate cash to operate and
14 provide services.

15 Q. Was there a -- were there any payments in the near
16 future that you had to decide whether to make or
17 not?

18 A. Yes. If you look at the schedule, you'll notice
19 under June 13, column -- second column to the left,
20 there's a line in the middle of the page called POC
21 and debt related payments. There's approximately a
22 \$40 million payment due by the City on June 15th.

23 Q. And was there a decision to be made with respect to
24 that payment?

25 A. There was. Given how tight the City's cash

1 collect property and income taxes were and we
2 immediately realized in June of 2013, which was
3 only a month away from this forecast date, that the
4 City was operating on a razor's edge. If it were
5 to make the \$40 million bond payment on June 15th
6 to the POC bondholders, that would only make sense
7 if indeed collected all of its anticipated tax
8 revenues on schedule in the amounts stipulated
9 here. A \$7 million cushion on a budget of this
10 magnitude is almost effectively nothing.

11 That also alarmed me because I knew we
12 still had a continuing problem with the swap banks,
13 Bank of America and UBS, we knew we would have to
14 negotiate some kind of agreement with them to
15 retain our access to the gaming revenues which
16 you'll see here for this short period of time is
17 \$105 million, you'll notice how regularly it's
18 projected to come in, and that is a matter of
19 historical record is quite accurate. The City has
20 always been able to rely on those revenues in the
21 absence of anything else because they're collected
22 by the gaming casinos themselves.

23 We realize that if it turned out that our
24 recommendation to the City in order to reserve --
25 preserve cash was to not make the \$40 million bond

1 position was, they only had even on the projections
2 7 million cash if they made that payment -- we had
3 to consider the necessity of not making it in order
4 to preserve liquidity.

5 Q. Were there any other ways that you haven't
6 discussed to preserve or enhance the City's cash
7 position in May of 2013?

8 A. Well, as I testified earlier, we had looked at all
9 of the City's assets to find out if any of them
10 could be marshaled to create significant cash for
11 the City and that began in January. We revisited
12 that in early May. We unfortunately came to the
13 same conclusion we came to in January that really
14 there was nothing that was readily convertible into
15 cash. The City effectively had mortgaged all of
16 its real assets years before. The City did have
17 potentially \$60 million left in the escrow account
18 established with the state in 2012. I called
19 senior deputy Treasurer sacks ton to ask whether
20 that might be available to the state if we really
21 found ourselves in an emergency and he said that it
22 would really depend on our overall recommendation
23 and dealing with the City's long-term financial
24 problems.

25 Q. All right. Did you and the advisors ever come to a

1 conclusion, a consensus at any point as to whether
2 or not the City was insolvent?

3 **A.** Yes.

4 MR. SHERWOOD: Objection. I object to
5 any testimony about insolvency. This is not an
6 expert witness and it calls for a legal conclusion.

7 BY MR. CULLEN:

8 **Q.** In the course of your work, do you -- are you
9 always or often called upon to address that
10 question and advise on that issue?

11 **A.** Yes.

12 **Q.** What is your understanding of insolvency?

13 MR. SHERWOOD: Your Honor, I renew the
14 objection. I assume when this witness is called
15 upon to testify in other matters concerning
16 insolvency, he is qualified as an expert witness.

17 THE COURT: Hold on one second.

18 MR. CULLEN: Pardon me?

19 THE COURT: Hold on one second for me,
20 please.

21 MR. CULLEN: Sure.

22 THE COURT: I do think it is appropriate
23 to ask the witness about the facts that constitute
24 insolvency under 101.32C, of the Bankruptcy Code.

25

1 foreseeable future?

2 **A.** We didn't see a possibility of that. The City had
3 lost.

4 MR. SHERWOOD: I'm sorry to interrupt
5 again, Your Honor. I object. Calls for a lay
6 opinion. Again, talking about.

7 THE COURT: The objection is overruled.
8 Go ahead, sir.

9 THE WITNESS: Well, as a banker, the
10 first thing we always evaluate is whether a company
11 or a government can borrow to cover a short term
12 financing requirement. In the case of Detroit,
13 it's access to the capital markets had been cut off
14 long before the most recent downgrade made it
15 impossible for the City to borrow in the ordinary
16 course on the markets, and in fact, had nothing
17 left to pledge to gain access to the capital
18 market. So that source of financing was closed.
19 And that's why indeed the prior year the state had
20 to step in and assist the City even in raising the
21 130 million it did raise because without that it
22 never would have been able to do that.

23 We then looked again at all of the
24 so-called non core assets of the City and
25 determined again whether any of those could be

1 BY MR. CULLEN:

2 **Q.** Did you come to the conclusion that the City was
3 unable to pay its debts as they came due?

4 **A.** Yes.

5 **Q.** What was the basis for that conclusion?

6 **A.** Well, there were two sets of facts that we relied
7 upon. One was this schedule, which was very short
8 term in nature and therefore we felt had -- could
9 be relied upon because it wasn't very long dated.
10 And it clearly showed that the City was operating
11 on a raiser's edge liquidity.

12 Secondly, we knew because we were in
13 constant communication with the City's finance
14 staff that they were routinely stretching out
15 payables and attempt to conserve cash. They were
16 not paying their trade creditors when due even at
17 date of the May 13 report.

18 **Q.** In your view as of -- as of May of 1913, was the
19 City able to pay its debts as they came due?

20 **A.** No, in fact, they were continuing to stretch out
21 and defer payments whenever possible to conserves
22 cash.

23 **Q.** Was there any probability in your view of the
24 City's operations and cash flow of its remedying
25 either of those situations without aide in the

1 readily converted to cash. We again came to the
2 conclusion that there was nothing of any
3 significance that could be converted to cash in the
4 timeframe required to avert a cash crisis in June
5 or July of this year.

6 BY MR. CULLEN:

7 **Q.** Turning your attention now to the June 14th
8 proposal to creditors. Did you have input into the
9 strategy and concept of that document?

10 **A.** I did.

11 **Q.** Could you tell me what your understanding of what
12 that proposal was meant to achieve was?

13 **A.** Going back to the --

14 MR. CULLEN: If that's an understandable
15 sentence.

16 THE COURT: Close enough.

17 THE WITNESS: Going back to the consent
18 decree of 2012, between the City and the state,
19 Annex B clearly -- the state expected the City and
20 the City agreed to review comprehensively all of
21 its operations and its long-term financial
22 stability in order to come up with a strategy that
23 would, if implemented, result in the rebirth and
24 rejuvenation of the City as well as paying its
25 creditors what they were owed.

1 We were specifically tasked with working
 2 on that list of activities, especially with regard
 3 to long-term obligations, and when we got hired by
 4 the City in January this year to assist with that
 5 project, we explained to the City that the only way
 6 in which we could establish a proper foundation to
 7 negotiate with our stakeholders, whenever that
 8 deemed necessary to take advantage of, would
 9 require us to give our stakeholders as much
 10 information about the City's financial condition as
 11 we could.

12 And until they had as much information as
 13 we could reasonably develop about the short term
 14 forecast as well as the long-term condition of the
 15 City, they could not be in a position to properly
 16 evaluate whatever restructuring proposal we
 17 ultimately made to them in consideration of their
 18 claims.

19 So in January, when we first sat down
 20 with Ernst & Young and Conway MacKenzie, we all
 21 agreed that that would be the goal to where we
 22 would work, would be to develop a set of
 23 information that all policymakers and our
 24 stakeholders could rely upon to evaluate whatever
 25 we deemed our strategy to be. And that was our

1 liabilities of the City were.

2 In our original review of 2012, we relied
 3 on publicly available information, which was
 4 accurate insofar as the funded debt went, but we
 5 really did not know whether the projections and
 6 liabilities associated with other liabilities,
 7 particularly healthcare and pension, were accurate
 8 or could be relied upon, and that was a very
 9 important focus of our analytical work this year
 10 until the release of the June 14th plan.

11 So our role was after we received the
 12 information, was to then review with counsel the
 13 appropriate way to construct an offer to all of our
 14 stakeholders, which recognized what the City's true
 15 debt capacity was and then decide what would be an
 16 appropriate way of allocating that across our
 17 stakeholders.

18 **Q.** Now you talked about a level of services consistent
 19 with sustaining the population and the tax flow
 20 revenues of the City, did you not?

21 **A.** I did.

22 **Q.** How did you go about identifying that level of
 23 services?

24 **A.** Well, again, going back to March of 2012, the City
 25 itself had identified a long list of areas in which

1 goal and that was our objective from January until
 2 May of this year.

3 BY MR. CULLEN:

4 **Q.** In terms of putting out all of the proposal and
 5 informing the stakeholders of the state of the
 6 City, can you tell me what your input was into the
 7 structure of the offer itself, the structure of the
 8 plan?

9 **A.** Well, the structure of the -- the restructuring
 10 proposal we made in the June 14th document that was
 11 publicly made available on that date really relied
 12 upon the ten-year forecast that Ernst & Young had
 13 put together to show what a realistic view of the
 14 City's revenues would be and that would be assuming
 15 the impact of the reinvestment plan of over a
 16 billion dollars over the next ten years would allow
 17 the City to stop its decline and set a foundation
 18 for renewal. Based on the financial implications
 19 of that program, we then were able to calculate
 20 what was available to give to our stakeholders in
 21 consideration of their claims, which in and of
 22 itself was very complicated analytical challenge
 23 because until Ernst & Young and Conway had really
 24 examined the off balance sheet liabilities of the
 25 City, we really didn't know what the real

1 it felt it needed to restore or invest services,
 2 blight removal, police, fire, lighting, a whole
 3 list of things, but there was no budget against
 4 them. We didn't know what it would cost, nor did
 5 we know how long it would take to implement any of
 6 those potential program areas. And that was the
 7 primary focus of Conway MacKenzie's work together
 8 with the City's own staff was to identify precisely
 9 how much it might cost to implement all of those
 10 objectives.

11 **Q.** And in terms of your previous discussions of time
 12 and cash, how did they play into this June 14th
 13 proposal?

14 **A.** Well, we had discussed with the City back in
 15 January of this year what we would do once we came
 16 to a conclusion about what the City really could
 17 afford in terms of its obligations while
 18 reinvesting in rehabilitation. And we explained to
 19 the City that as long as we had cash, as long as we
 20 had liquidity, we would be able to construct an out
 21 of Court negotiating strategy that would, with
 22 enough time, allow us to negotiate with all of our
 23 creditors and not have to result in immediately a
 24 Chapter 9 filing, although that would always have
 25 to be considered if for no other reason than when

1 negotiating with creditors, if you don't let them
 2 know that that's a possibility, it's hard to get
 3 them to take you seriously in a negotiation to keep
 4 a country or a City or a company out of bankruptcy
 5 Court.

6 **Q.** So could you make that concrete for me, how much
 7 cash equals how much time?

8 **A.** Well, normally you would want to have enough cash
 9 to operate without interruption from the
 10 negotiations for at least six months to a year.

11 **Q.** And how much money would that be in this case?

12 **A.** Several hundred million dollars.

13 **Q.** Did the City have that?

14 **A.** No.

15 **Q.** If I could direct your attention to page 41 of
 16 the --

17 **A.** May I correct one thing? I apologize. The City
 18 did not have the money, and the only way it could
 19 get cash would be to pay its unsecured obligations
 20 such as the POC bonds but that would have created
 21 another level of defaults which would have brought
 22 us right back to the problem I had with the swap
 23 counter parties which they had right due to
 24 remedies to block our access to gaming revenues, so
 25 if we did try to solve our liquidity with not

1 **A.** Well, the intention was to provide our stakeholders
 2 with the best possible information about the City's
 3 true condition that we could develop and we had
 4 been working around the clock on this for months.
 5 We also wanted to make sure that when we did begin
 6 discussing with stakeholders, they would see what
 7 we thought made sense for all of our stakeholders
 8 at the same time so that there would be no doubt
 9 that the City was approaching this in the most even
 10 handed and fair way possible.

11 **Q.** And when you say even handed and fair, what aspect
 12 of the proposal can you point to that reflects that
 13 determination or that principal?

14 **A.** Well, just to pick out one example, we felt it
 15 important to start out by delineating our creditors
 16 into whether they were secured or unsecured, and we
 17 proposed that our secured creditors would receive
 18 100 cent recoveries, our unsecured creditors would
 19 share pro rata in what we believed was the value
 20 available to them pursuant to our restructuring
 21 plan which was \$2 billion of notes.

22 THE COURT: Which was what?

23 THE WITNESS: \$2 billion of notes. That
 24 was all we calculated the City could afford post
 25 this restructuring in terms of debt capacity.

1 paying our unsecured creditors, we may lose it
 2 because we lose the gaming revenues.

3 **Q.** Exhibit 43, page 41.

4 **A.** Sorry, I've lost you. What exhibit are you on.

5 **Q.** I haven't asked a question yet. All right.

6 THE COURT: It's on your screen there.

7 THE WITNESS: Yes.

8 BY MR. CULLEN:

9 **Q.** Does this accurately reflect what about purports to
 10 reflect, the key objectives for the financial
 11 rehabilitation and restructuring?

12 **A.** Yes, these are the objectives set out to us by the
 13 City.

14 **Q.** Were these objectives new in this report?

15 **A.** No, these were all reflected in the consent
 16 agreement of March of 2012.

17 **Q.** Had substantial progress been made on any of these?

18 **A.** No.

19 **Q.** In terms of the discussions internally within the
 20 brain trust of the City, as I might call it that,
 21 the mayor and his advisors, what was the -- was
 22 there an intention to make this proposal a take it
 23 or leave it proposition?

24 **A.** No.

25 **Q.** What was the intention?

1 BY MR. CULLEN:

2 **Q.** And have you used the words in the past pari passu
 3 to explain that model as well?

4 **A.** Yes.

5 **Q.** Now there's been a lot of discussion in the case
 6 about asset sales and you've discussed it some
 7 today, but I would like to direct your attention to
 8 pages 83 to 89 of Exhibit 43. And take you through
 9 this list of assets so that you can talk about --
 10 and I apologize for the nature of this question,
 11 but I think it will move things along -- so you can
 12 talk about the consideration of the nature and
 13 effort given to each asset, the values available,
 14 and the hurdles to be overcome or to be avoided in
 15 getting -- turning the asset into money. If I can
 16 proceed that way, Your Honor.

17 THE COURT: Yes.

18 MR. CULLEN: With respect to each of the
 19 assets.

20 THE COURT: Go ahead.

21 BY MR. CULLEN:

22 **Q.** Detroit Water & Sewage?

23 **A.** Well, the Detroit Water & Sewer Department is a
 24 very complicated situation. It had been operating
 25 under federal Court order for a very long time. At

1 the time of our engagement in January, it was the
 2 still operating under the supervision of the
 3 so-called root cause committee, which was really
 4 effectively the governance body, although the
 5 assets were owned by the City and are still owned
 6 by the City, the City has never received any cash
 7 flow from its ownership stake.

8 The department has operated on the basis
 9 of zero profit, it is allowed to recover its
 10 operating maintenance and debt services from rate
 11 pairs and that's all so it's never been a source of
 12 cash flow to the City.

13 And furthermore, in addition to that, we
 14 had no ability to raise rates to generate cash.
 15 That would not be allowed under the utilities laws
 16 of the State of Michigan. And we also had no
 17 ability to pick up and sell it overnight because as
 18 I mentioned before, it was under a Court order
 19 until March of this year.

20 So we began to evaluate after that Court
 21 order was I guess dismissed is the correct phrase
 22 whether or not we could in fact realize cash from
 23 the system but because of its public nature, we
 24 recognize it would be extremely complicated to do
 25 and that the only way to do it would really be to

1 pay someone to take it.
 2 Q. Move on to the Belle Isle Park, if we would,
 3 please. I'm sorry, Detroit Windsor tunnel.
 4 A. Well, the City owns half the tunnel, Windsor owns
 5 the other half. Under prior administration,
 6 Detroit leased its portion of the tunnel in
 7 exchange for rent equal to 20 percent of annual
 8 revenues. The last year, I believe it collected
 9 \$750,000. The City has no ability to vacate the
 10 lease which turns through 2020, there is no ready
 11 buyer for it. Given the lease which encumbers the
 12 asset, there was no value to be realized there.
 13 Indeed, we recommended instead that the City audit
 14 the operations of the operator to find out whether
 15 it would be getting a fair allocation of revenue
 16 and that audit is still ongoing.

17 Q. Belle Isle Park.
 18 A. Belle Isle Park is a major park of the City. We
 19 did not believe that it would have any material
 20 value as any other -- any other application. First
 21 of all, it would require a rezoning. Rezonings are
 22 typically long and complex undertakings. It is an
 23 important social asset of the City. Converting it
 24 into any kind of private use would again be long
 25 and contentious process. We did not believe it

1 either sell it to its customers in exchange for a
 2 lease payment or a pilot payment, or consider some
 3 version of a privatization.

4 We've been contacted by a number of
 5 private equity firms which have expressed an
 6 interest in buying it if they could, but only if
 7 they could charge higher rates to recover their own
 8 cost of capital. So we recognize, even though this
 9 would be potentially a source of great value to the
 10 City, it would be a long and complex process with a
 11 low probability of success.

12 Q. The Coleman Young Airport. Next page. Coleman
 13 Young Airport.

14 A. The airport is currently not being used for
 15 commercial services, it's being used for so-called
 16 general aviation only. It's a very small airport,
 17 it's run ways are too short to allow regular
 18 commercial service by major carriers. The airport
 19 itself is dilapidated and would require
 20 reinvestment to bring it up to commercial standard.
 21 It's effectively worth nothing and likely not to be
 22 worth anything unless these reinvestments are made.

23 And we did explore it actively about one
 24 of my partners who is an airlines expert. We came
 25 to the conclusion that, you know, we would have to

1 could be converted in any form of cash at any time
 2 soon.
 3 Q. Next page, please. Detroit Institute of Arts. The
 4 number of words under states the interest in the
 5 problem. Could you tell us what investigations and
 6 efforts have been done with respect to the Detroit
 7 Institute of Arts?

8 A. Well, back in January when we first began our
 9 engagement, we discovered and we had not known this
 10 before, that the City of Detroit actually does own
 11 the building and the art collection of the Detroit
 12 Institute of Arts, which is operated on the City's
 13 behalf by the DIA corp which is the founders
 14 society as a contractor to the City.

15 We obviously were concerned about this and
 16 had to decide whether or not this might be a source
 17 of value for the City. I did meet with trustees
 18 and managers of the DIA in May and explained to
 19 them that they should be concerned about the fact
 20 that in the worst scenario, the collection and the
 21 art might need to be dealt with as part of a
 22 restructuring and it would be in their interest as
 23 trustees of the operator to try to secure funding
 24 from whatever source they could to give to the City
 25 in exchange for a protective covenant. I thought

1 that would be a clever way of realizing short term
 2 cash for the City which would not necessarily
 3 require the arduous process of trying to take the
 4 art and selling it on a fire sale basis.

5 **Q.** And what was the response?

6 **A.** They told me that would be impossible, that no
 7 money was available from anybody that they knew,
 8 and that it was not something they would consider.

9 **Q.** And subsequently, did any office of the state weigh
 10 in on this issue?

11 **A.** Yes. The attorney general issued an opinion that
 12 the art was in a public trust and could not be used
 13 for any other purpose, despite the fact that a
 14 significant part of the collection had been paid
 15 for by tax revenues of the City of Detroit.

16 **Q.** Has that progressed any further?

17 **A.** Somewhat.

18 **Q.** Has there been an attempt to value it?

19 **A.** At our recommendation to the Emergency Manager,
 20 Christie's, which is an internationally known
 21 auction house with expertise in these matters has
 22 been engaged in an appraisal of that portion of the
 23 collection paid for by the City. I expect to get a
 24 preliminary estimate from them in a matter of
 25 weeks.

1 the process of putting together an auction to sell
 2 the rights to use those parking garages to others.
 3 I would note that many of the garages are in such a
 4 dilapidated condition they are unsafe. Ironically
 5 enough, the garage supporting the DIA has been
 6 condemned. It has not been used for any commercial
 7 purpose for a number of years because it's in such
 8 bad condition. I'm not sure what anyone would pay
 9 us for that.

10 **Q.** Joe Louis Arena.

11 **A.** Again, you know, it's an old facility, currently
 12 obsolete. We're entertaining alternatives for it,
 13 but we haven't received any.

14 **Q.** And with respect to all of these asset sale
 15 possibilities or asset monetization possibilities,
 16 had they all to your knowledge been the subject of
 17 discussion before they appeared in this report?

18 **A.** Well, prior to our involvement, I can't testify to
 19 that, but as soon as we were engaged, we
 20 immediately began to systematically look at all
 21 these assets to find out whether any of them could
 22 be turned into cash, and it was the subject of
 23 intensive analysis by my firm beginning in January
 24 of this year.

25 **Q.** All right. And -- pardon me, Your Honor.

1 **Q.** City-Owned Land.

2 **A.** Well, we originally hoped that this land could be
 3 quite valuable. It's not every day that 22 square
 4 miles within a massive urban area becomes available
 5 for redevelopment. We thought that should be of
 6 interest to some set of developers, but again, the
 7 land is in disparate parcels, it's held in
 8 disparate hands, there are at least count five
 9 different government entities that control
 10 different parts of the property represented by the
 11 22 square miles. There is no coherent strategy for
 12 disposal, marshaling or redevelopment of this
 13 property.

14 In addition, much of the land is still
 15 encumbered with blight. It would require
 16 significant investment to remove that blight. And
 17 lastly, a lot of the land is subject to liens which
 18 have not been cleared. And the cost of clearing
 19 those liens would not be in substantial here.
 20 Again, even though individual parcels might be
 21 available for cash, there is no substantial value
 22 to be realized from this today.

23 **Q.** Parking operations.

24 **A.** Again, the City owns nine garages, many of which
 25 are being operated by others. We actually are in

1 In the -- in the proposal itself, was
 2 there any discussion of what would happen to
 3 further unsecured payments of debt going forward?

4 **A.** Well, on June 14th, we told the creditors and we
 5 had over a hundred people show up at that meeting,
 6 that we had taken the decision because of the
 7 City's dire cash position to not make the
 8 \$40 million bond payment due on June 15th and that
 9 we would be suspending all other unsecured debt
 10 payments for the foreseeable future in order to
 11 conserve cash.

12 **Q.** And did you view that as necessary in light of the
 13 circumstances of the City?

14 **A.** We did, but we also felt we could take that step
 15 because we were able to negotiate an agreement in
 16 principal just prior to that date with the swap
 17 banks which we felt would allow us to continue to
 18 have access to our gaming revenues, which was an
 19 essential condition to allowing the City sufficient
 20 time to negotiate with the stakeholders.

21 **Q.** So again, what was the relationship between the
 22 settlement with the swap banks and the ability to
 23 negotiate?

24 **A.** Well, the swap banks already had one uncured
 25 default, the ratings down grade, the appointment of

1 Kevyn Orr was in and of itself a default be and we
 2 knew once we took the decision to not make the bond
 3 payment, that would be another default, at some
 4 point, especially after the swap banks saw the
 5 financial condition of the City, they might feel
 6 they had no option, but to be defensive in
 7 protecting their own position, even if they didn't
 8 want to, and block our access to gaming revenues.
 9 So having an agreement with them in place prior to
 10 taking a decision to not make the bond payment was
 11 crucial.

12 **Q.** After the June 14th proposal in the public meeting
 13 at which it was presented, did you make further
 14 efforts -- did you make any efforts to generate
 15 counter proposals, discussions, other interests?

16 **A.** Yes.

17 **Q.** What -- could you describe generally those efforts?
 18 First let me put up on the screen Exhibit 44, the
 19 full version of the creditors proposal -- well,
 20 pages 61 and 62. And is this the calendar that you
 21 set forth for your efforts in the proposal?

22 **A.** Yes.

23 **Q.** Now what did you personally do to try to talk to
 24 contact various stakeholders?

25 **A.** Well, we were fortunate in one respect. We had had

1 that we did, we wanted to make sure they could rely
 2 upon it to be accurate, and we wanted them to also
 3 understand that despite all the promises that had
 4 been made to both bondholders and others, the City
 5 did not have the resources and likely would never
 6 have the resources to honor those promises. We
 7 felt they had to have that information in order to
 8 understand what we were asking them to do in terms
 9 of compromising their claims to allow fair
 10 treatment for everybody.

11 **Q.** In the discussions you had with any of the
 12 stakeholders, did you encounter any resistance to
 13 the idea of compromising their claims at less than
 14 100 percent?

15 **A.** Nobody was willing to consider any proposal in
 16 which they compromised their claims.

17 **Q.** You when you say nobody, who do you mean?
 18 **A.** Well, I was primarily responsible for discussions
 19 with the bondholders and other funded debt holders
 20 of the City and I would further break that down
 21 between the Detroit Water & Sewer revenue
 22 bondholders and the general obligation and cop
 23 bondholders of the City. Given our expertise as
 24 investment bankers and the fact we had
 25 relationships with most of these people, that made

1 a very robust response to our invitation to the
 2 meeting on June 14, we had been able to identify
 3 all of the bond trustees and all of the bond
 4 insurers that insured much of the City's debt.
 5 They effectively could be relied upon to speak for
 6 if not actually vote the interest of their
 7 underlying bondholders and so we were very happy
 8 that they all agreed to come and hear our proposal
 9 because we knew we could begin our discussions with
 10 them, they already were organized.

11 We also knew who could speak for the
 12 pension trusts and they were invited and we also
 13 invited union representatives who we hoped could
 14 speak for both the active and retired employees of
 15 the City so they were all present on the 14th of
 16 June.

17 **Q.** And was it your desire to promote discussions and
 18 counter proposals?

19 **A.** Well, that was the whole intent of the meeting. We
 20 in spent months developing the financial
 21 information, we felt our stakeholders deserved to
 22 be able to evaluate not only their current
 23 positions relative to the City, but evaluate the
 24 proposal that we made to them at that meeting. We
 25 wanted them to have exactly the same information

1 sense so I took primary responsibility for those
 2 discussions. The discussions with our other claim
 3 holders, primarily the pension funds and retirees
 4 and active employees were led by Conway MacKenzie
 5 and Jones Day as well as some of my partners at
 6 Miller Buckfire.

7 **Q.** And what kind of response did you get in those
 8 discussions?

9 **A.** Well, speaking with the bondholders, and again, I'm
 10 using that between both the secured bondholders and
 11 the unsecured bondholders, nobody was willing to
 12 consider any compromise of their claims whatsoever.
 13 In fact, even the secured bondholder bondholders,
 14 that is, those bondholder bondholders who held debt
 15 at the water and sewer department were very unhappy
 16 because our plan contemplated if we were to create
 17 a new authority controlled by the customers of it,
 18 that we would want to take advantage of the fact
 19 that that authority could borrow at a much higher
 20 credit rating than Detroit could and even though we
 21 were going to give them 100 cent recovery, it would
 22 not be in the form of new bonds that would have the
 23 same old interest rates. In other words, they
 24 wanted to have the benefit of a strong investment
 25 grade rating but retain bonds that were giving them

1 interest at double B costs, so even they didn't
 2 like the proposal. I was not surprised by that,
 3 but I hoped that they would at least counter with
 4 something else, which they did not do.

5 **Q. (By The Court):** What does the phrase double B cost
 6 mean?

7 **A.** It refers, Your Honor, to credit rating. Cities as
 8 do companies borrow in the markets at a spread over
 9 the so-called risk free rate although some could
 10 argue today I'm not sure what that is, but let's
 11 assume for the moment that's the treasury yield
 12 curve. The Double B cost would be perhaps a spread
 13 of 400 or 500 basis points over the treasury cost
 14 where the Single A cost of borrowing might be a
 15 hundred basis points over. So the difference would
 16 be obviously reflecting the risk of a lower rated
 17 credit.

18 **Q.** Did you receive any indications in your discussions
 19 with any of these bondholders that some of the
 20 considerations in their negotiations are non
 21 negotiations you with had to do with considerations
 22 that extended beyond the City of Detroit?

23 **A.** Yes, in discussions with the bond insurers who
 24 insured the water and sewer debt, about five and a
 25 half billion dollars of that, several of them also

1 Now in the case of Detroit of, of course,
 2 they've come to the end of the road because on the
 3 property tax side for a moment, we know that the
 4 property tax millage that the City has already
 5 assessing is already at the state maximum, so the
 6 City would have no ability to raise taxes or tax
 7 rates to pay this debt.

8 That was an anathema to the bond insurers
 9 because they had operated, as does the municipal
 10 bond market, on the theory that general obligation
 11 debts are higher credit and less risky than revenue
 12 bonds.

13 We, on the other hand, when we did the
 14 math, recognized the City could never begin to
 15 satisfy its unsecured obligations which would
 16 include the general obligation bonds, and we had
 17 classified those bonds pari passu with the other
 18 unsecured obligations of the City, in this case our
 19 underfunded pension claims and healthcare claims.

20 **Q.** If I could have you take a look at Exhibit 37.
 21 This is a set of meetings that I won't go through
 22 completely, but if you'll just look down the left
 23 hand side and across the top, can you tell me, did
 24 you or a representatives of Miller Buckfire
 25 participate in virtually all of these meetings?

1 insured GO debt, general obligations bonds of the
 2 City, and they made it very clear to me that they
 3 were not willing to consider any impairment of the
 4 GO bonds because they believed that the GO pledge
 5 was so much more valuable in every other
 6 jurisdiction in which they insured bonds that
 7 creating a precedent of impairment here would
 8 damage their businesses elsewhere.

9 **Q.** And when you say GO bonds, explain to the Court
 10 what you mean?

11 **A.** The City up until recent times had been able to
 12 issue unsecured debt, that is not secured by a
 13 specific revenue pledge but secured instead by the
 14 full faith and credit obligation to raise taxes
 15 sufficient to pay that debt when due and there are
 16 two different kinds -- unlimited tax and limited
 17 tax general obligation bonds -- both of which have
 18 been considered for many years to be of higher
 19 credit and less risk than revenue bonds because a
 20 revenue bond is specifically secured only by the
 21 revenues of a project or an authority or a utility
 22 whereas bonds secured by taxing authority are
 23 considered to be much safer because the City is
 24 required to raise taxes in the ordinary course
 25 until that bond can be repaid.

1 **A.** Yes.
 2 **Q.** Did the City ever receive a proposal from anybody?
 3 **A.** We did.
 4 **Q.** How many?
 5 **A.** We received I would say one and a half, one that
 6 was actually written out and meant to be
 7 responsive. The second was really just a letter
 8 saying the they would like to come talk to us again
 9 about something, but only if we would stipulate
 10 they get 100 percent recovery.

11 **Q.** And was that the one of the one and a half proposal
 12 that was attractive enough to follow up on?

13 **A.** No, because they were linking any willingness to
 14 negotiate on water and sewer debt to our treatment
 15 of the GO bonds, that they also insured.

16 **Q.** What in your view is the alternative for the City
 17 if the plans set forth in the June 14th proposal is
 18 not achieved?

19 **A.** Well, first the City will not be able to execute
 20 its reinvestment program. It would simply not have
 21 the money. That would mean the City would continue
 22 to be liquidated for the benefit of its
 23 stakeholders revenues are likely to continue to
 24 decline, services will continue to deteriorate,
 25 that would be the condition of the City in the

1 absence of this plan.

2 Q. Is that a long term sustainable future for Detroit?
 3 A. From a financial perspective, no, because I don't
 4 believe if you want to measure sustainable future
 5 as having access to the capital markets that under
 6 that scenario Detroit would ever have access to the
 7 capital markets. They would have no credit.

8 MR. CULLEN: That's all I have, Your
 9 Honor.

10 MR. MONTGOMERY: If I may at this point,
 11 I would like to strike from the testimony all of
 12 the opinion testimony given by the witness for the
 13 last several questions starting with how the
 14 capital markets are reacting not through
 15 conversations with the witness, but in general, and
 16 I think this witness has given classic wonderfully
 17 prepared, rather wonderfully delivered expert
 18 witness testimony relying on hearsay, relying on
 19 specialized knowledge, relying on years of
 20 accumulated talent and education that this
 21 gentleman clearly has, but none of which was
 22 offered prior to the pre-trial or offered to Your
 23 Honor as expert witness testimony. I believe it
 24 should be stricken.

25 MR. CIANTRA: The UAW would join in that

1 Because it's somewhat upside down, an
 2 expert witness is qualified by his expertise and
 3 nothing else, that's why we let expert witnesses
 4 testify only rarely and under certain
 5 circumstances, but we let percipient witnesses
 6 testify all the time, all the time, to their
 7 experience, to what they saw, did, decided. This
 8 man tells the story. And that story is a factual
 9 story by a percipient witness of rare gifts but a
 10 percipient witness.

11 THE COURT: What you say it's as good as
 12 far as it goes, but it doesn't really meet the
 13 objection because the objection is that beyond
 14 explaining what the witness did and why he did it,
 15 is the question of whether that constitutes proof
 16 of the truth of the facts on which he relied to
 17 make the decisions that he made.

18 MR. CULLEN: And I would submit, Your
 19 Honor, that the judgment of a sophisticated person
 20 in real time is some proof of the truth of what
 21 they relied on.

22 I think that that happens in virtually
 23 every case --

24 THE COURT: Well, it strikes me that --

25 MR. CULLEN: -- at some level.

1 motion.

2 THE COURT: I wish you had objected at
 3 the time.

4 MR. CULLEN: Your Honor, part of our job
 5 here is to set forth before the Court the story of
 6 the decisions that were made and the reasons that
 7 they were made on behalf of the City of Detroit.
 8 This witness has done that. He was an operative
 9 figure in realtime. He has testified candidly as
 10 to the bases on which his decisions were made, the
 11 things he looked at, the advice he gave to the City
 12 as it faced these difficult decisions.

13 This story -- this is a factual story.
 14 It may need a man of rare experience to tell it,
 15 but it is nonetheless a factual story about things
 16 that were done in realtime, not about a piece of
 17 paper that was given to an independent person to
 18 look at and a set of assumptions from which to draw
 19 opinions. This is the actor. This is the actor at
 20 the heart of the story and he is telling his story,
 21 and as such, it has to be admissible, if that, as
 22 nothing else. He is the man who made the
 23 recommendations, he is the man who presided over
 24 the analyses. He has told that story and told of
 25 the basis for making these.

1 THE COURT: -- this issue overlaps
 2 largely if not entirely with the issue that you and
 3 your firm briefed here this morning and that we're
 4 going to argue tomorrow morning, so I would suggest
 5 that we hold the resolution of this until then.

6 Do you have any further questions of the
 7 witness?

8 MR. CULLEN: I do not, Your Honor, at
 9 this point.

10 THE COURT: All right. Counsel, do you
 11 want to press ahead with cross examination at this
 12 time or would you prefer to break now and resume in
 13 the morning.

14 MR. MONTGOMERY: Your Honor, my
 15 colleagues have suggested that we should break
 16 until tomorrow.

17 THE COURT: Apparently there was no hope
 18 for you in that, was there?

19 We will break for now. It's fine. We
 20 are close enough to 5:00. And so we will reconvene
 21 at 9:00 tomorrow morning.

22 Regarding our argument tomorrow morning
 23 on the issues raised here just now and by the
 24 memorandum that was filed this morning, I certainly
 25 do not request that you take your time to file a

1 brief. If you want to, obviously, I can't prevent
2 it. The sooner you file it, the more likely it is
3 we'll be able to read it and actually comprehend
4 it, so I would ask that if you do file something,
5 you do not file it at ten minutes to nine tomorrow
6 morning, please. But if there are authorities you
7 want me to consider, feel free to just bring them
8 to Court tomorrow and we will deal as best we can
9 given the expedited nature of this.

10 MR. CULLEN: Thank you, Your Honor.

11 THE COURT: So we will be in recess.

12 COURT CLERK: All rise. Court is
13 adjourned.

14 4:42

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